SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY DEVELOPMENT

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

NOVEMBER 3, 1993

Printed for the use of the Committee on Banking, Finance and Urban Affairs

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CONTENTS

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

WEDNESDAY, NOVEMBER 3, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING
AND COMMUNITY DEVELOPMENT,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Henry B. Gonzalez [chairman of the subcommittee] presiding.

Present: Chairman Gonzalez, Representatives Waters, Gutierrez, Rush, Furse, Roukema, and Knollenberg.

Chairman GONZALEZ. The subcommittee will please come to order.

Today the subcommittee is here to examine several issues of critical importance to the operation of the Section 8 Housing Assistance Payment Program, which is, of course, now one of the major housing assistance tools in law.

Two of the issues, the merger of the Section 8 Certificate and Voucher Program and the contract rent adjustment concerns us immediately, as they are addressed in the President's Government Reform and Savings Act of 1993, which in effect is a rescission.

This was just introduced in the House as H.R. 3400, and, of course, pursuant to the formula since 1981, which was the first year that the Budgetary Reform Act of 1974, was implemented. Let me say for the record that I was one of the handful that didn't vote for that reform, and I regret to say that what is happening now and the mess that seems to be messier than ever, was what I felt was inevitable.

But in any event, it is confronting us, and under these peculiar procedures each committee in effect is mandated for—it is very much like fast-track. For the remaining issues, fair market rents, administrative fees, and expiring contracts, this hearing represents only the first of several that are contemplated.

Now, while I support the consolidation of the Certificate and Voucher Program, let me say again that these were programs that were born in the 1970's during the same—I don't know what to call it, fixation with cutting spending or rather, it has turned out to be a malaise, and that is how could you do something without spending money, and calling it a subsidy. Of course, the results—what can we substitute for public housing, this dastardly program known as public housing? And I have seen it all come and go through this subcommittee.

Who remembers the so-called Turnkey Housing Program? That was Texas Senator John Tower's answer, substitute, so he said, for public housing in the Senate. And, of course, those of us that asked questions were not heard very much.

But anyway, we have got this now, and we have got problems, and even though I might support the consolidation of Certificate and Voucher Programs, it is no more than what we had in the House version of the 1992 act. But this may best be left for additional hearings and the regular legislative process, which we will go into definitely this next session as we go into the full range of reaffirming and extending the existing assisted housing programs.

I am concerned that this merger is actually a rewrite of the Voucher Program. I am concerned that the major policy of a 30-percent rent-to-income ratio for rent is compromised. The Congress has established the 30 percent rent. Of course, it was 25 percent longer than it has been 30 percent, as a standard for portable and low-income families.

So I cannot in good conscience condone a program that would permit up to 50 percent of the participants to pay up to 45 percent of their adjusted income for rent. I believe that places an inordinate cost burden on tenants.

I will be interested in hearing the witnesses' perspective on this critical element of the merger. I will also be interested in the witnesses' comments on the proposed freeze on contract rents for section 8 new construction and substantial rehabilitation projects, involving some 850,000 units.

I understand that the proposed freeze will provide budget savings in excess of $500 million, which is projected. I fear that this proposal clearly presents legal and constitutional questions. HUD attorneys have expressed their doubts about the legalities of this approach to savings. The remaining issues that we take up today we have discussed before in hearings and in other forums.

I know that fair market rents and administrative fees have been the subject of much of the correspondence in the office for over a year, and I suspect in many offices of members of the subcommittee as well. We must find practical and equitable approaches to reforms to the FMRS, the fair market rents and fees.

This hearing will frame the issues for further deliberations, particularly for consideration of the Federal response to the issues of expiring section 8 contracts. I am hopeful that the witnesses can provide us with options that we should consider for determining fair market rents and administrative fees, and for preserving section 8 projects with contracts that start to expire in 1995, in 1996 through the year 2000.

This inventory represents nearly 850,000 affordable housing units, and it is our responsibility to determine an equitable and cost-effective way to preserve as many of these units as possible where owners wish to continue to own and operate this housing as affordable housing.

I am looking forward to the testimony, but in the meanwhile we will recognize our colleague, Ms. Waters, if she has any statement she wishes to make.

[The prepared statement of Chairman Gonzalez can be found in the appendix.]

Ms. WATERS. Thank you very much, Mr. Chairman.

I am pleased to participate in this hearing as we begin discussions on issues related to the Section 8 Housing Assistance Programs.

These issues are timely, and I commend you and your leadership for bringing these matters before the subcommittee. Last week the President transmitted to Congress legislation aimed at making government more effective, efficient, and responsive. The administration's Government Reform and Savings Act of 1993 includes a number of recommendations for reforming HUD.

I am particularly interested in those recommendations that affect the operation and management of the Section 8 Program. Most housing advocates would agree that the Section 8 Program is one of the most effective tools we have to provide housing assistance to homeless and low-income persons. It has been estimated that some 800,000 Americans are on waiting lists to receive section 8 certificates.

I agree that making government more efficient is a worthwhile goal, and I applaud the administration for the serious proposals they have offered. However, Mr. Chairman, I would just urge that we proceed with caution as we begin consideration of these proposals. We must remember to look beyond the data and see the lives of the people that will be affected by these changes.

As this subcommittee is charged with the responsibility of shaping our Nation's housing policy, I think it is very appropriate that we engage in these early discussions. I look forward to receiving the testimony of the witnesses.

Mr. Chairman, I look forward to my continued work on this subcommittee as we tackle the tough housing issues that face us.

I would like to just close by saying, I share your support for consolidation of certificates and vouchers. But I also am very concerned that we do not have a system that creates real opportunity for some of our citizens and at the same time penalizes others.

And I am concerned that we make sure we do not have the kind of system that would allow some people to pay up to 50 percent of their income for housing.

Thank you, Mr. Chairman. I would like to submit my statement for the record.

[The prepared statement of Ms. Waters can be found in the appendix.]

Chairman GONZALEZ. Certainly, your prepared text will be in the record, as you prepared it, following your oral remarks. I want to thank you for your valuable contribution to this subcommittee.

Mr. Knollenberg, do you have any statement you wish to make?

Mr. KNOLLENBERG. Thank you, Mr. Chairman. I do have an opening statement. I appreciate your holding this hearing, and I am looking forward to the testimony.

I welcome this hearing in particular on the Section 8 Housing Program. Recently, I read a number of disturbing reports about the level of fair market rents in certain communities. The taxpayers, I think, are clearly getting bilked by a system which somehow sets rents of $800, $900, or even $1,000 for units which would bring probably no more than $400 or $500 on the open market. This may

not seem like a big part of the overall market, but it should be investigated further.

What it tells me is what I have suspected for some time, that public housing has become an industry which has moved far beyond its original purpose. That original purpose was to temporarily house those people who were out on their luck. Over the years it has mushroomed into a giant dependency program with many entities feeding at the public trough.

I have tried to figure out ways to help those in public housing get out of it, and I have put together legislation to reform public housing and public housing rent. The current system punishes those who want to work by forcing substantial rent increases on them when they increase their income.

This legislation would allow PHAs to set markets and fixed rents for their tenants. One problem is that even though we encourage people to work and pay more taxes, the Congressional Budget Office tells us that this proposal will require additional appropriations in the short run. In other words, we have to come up with some money.

Mr. Chairman, I propose we cut the excessive payments going to certain section 8 landlords and use those funds to implement a rent reform program that will help the tenants get back to work and to move on and out of public housing. We should get back to the original purpose of public housing.

I also want to add to that, if I could, Mr. Chairman, Mr. Thomas and Mr. Dooley have a bill that would allow HUD to reduce the High Rent Program and the high rents that are being charged. They had asked to testify this morning and apparently there wasn't time. I appreciate your consideration of that.

I just wanted the opportunity to make the group aware of the fact that they do have this legislation in process and would like to, if possible, provide that as an addition to the record, if you so agree.

Chairman GONZALEZ. If the gentleman will yield, we have communication from both the——

Mr. KNOLLENBERG. Mr. Dooley and Mr. Thomas.

Chairman GONZALEZ. Yes, particularly Mr. Dooley, and we—I suggested that they submit a statement in writing, and if possible be here. Mr. Dooley has submitted a statement, and I ask unanimous consent it be placed in the record. And we are well advised of the proposed legislation as well as these two Congressmen's interest.

Mr. KNOLLENBERG. My report is concluded and I appreciate the chairman's willingness to hear that introduction.

Thank you.

[The prepared statements of Mr. Knollenberg and Mr. Dooley can be found in the appendix.]

Chairman GONZALEZ. Thank you very much.

I want to express my gratitude to each one of the panelists for having accepted the invitation on quick notice. We have Mr. David B. Bryson, deputy director of the National Housing Law Project here in DC; Ms. Alyce Flanary, vice president-housing, National Association of Housing and Redevelopment Officials, based here in Washington, who is also a colleague from Belton, Texas, and is the

director of housing, Central Texas Council of Governments; Mr. Neil Churchill, president of the National Leased Housing Association based here in DC; Mr. Thomas R. Shuler, president of the National Apartment Association, based in DC, and the managing director of Insignia Financial Group, Inc., of Greenville, South Carolina, on behalf of the National Multi Housing Council and the National Apartment Association; and Mr. Paul T. Graziano, deputy general manager of the New York City Housing Authority, on behalf of the Council of Large Public Housing Authorities, based here in DC.

Does any of the witnesses have a time problem? If not, is there any objection to my recognizing you in the order that we introduced you?

Your statements as given to us, for which I want to thank you profoundly, at least those that came to my attention, I had them in time to read them in advance of the meeting, and I am very grateful. They will be placed in the record exactly as you presented them to us in writing.

So I would urge the witnesses, if they can, to summarize the main thrust of the written presentation.

Mr. Bryson.

STATEMENT OF DAVID B. BRYSON, DEPUTY DIRECTOR, NATIONAL HOUSING LAW PROJECT, WASHINGTON, DC

Mr. BRYSON. Good morning, Mr. Chairman, and thank you and Ms. Waters and Mr. Knollenberg.

I am David Bryson from the National Housing Law Project. Our project assists lawyers who are all around the country representing low-income tenants who are participating in the HUD Programs, including the Section 8 Program.

As you have indicated, we have submitted a prepared statement and I am certainly not going to read it now, but I will summarize what I think are the most important points to us, and, of course, the first one, which is vital to us, is the question of whether or not tenants under the Certificate or Voucher Program should be required to pay more than 30 percent of their income for rent.

Any housing assistance program, if it is going to be successful, has to have sufficient subsidy in it to reduce the rent to a level that is affordable by the tenants. Congress right now has set that affordable level at 30 percent of adjusted income. As the chairman noted in his opening remarks, it used to be 25 percent of adjusted income was considered to be an affordable level. That was raised in 1981 to 30 percent.

Our view is that that raise itself was a mistake. Setting up a system which requires tenants to pay even more than 30 percent of their adjusted income dooms this program to failure.

We have seen it happening with the Voucher Program as it has been in existence. We have seen tenants having to pay significantly above the 30 percent of income standard many, many times.

The impact of that is twofold. One, for the tenants who stay in the program, they have not enough money left over after paying for housing to afford the basic necessities of life. The other effect of it is that the poorest applicants are much more likely not to be able to participate in the program at all.

When the amount of rent that they have to pay gets up in the 45 and 50 percent level, the landlords are much more reluctant to rent to them than they ever would be. So we end up with a program much like the way public housing was going in the late 1960's where there were some people who were too poor for the program, because their incomes are so low that they cannot get landlords to rent to them when the subsidy is not deep enough to reduce their rent to 30 percent of income.

We do acknowledge that there are some frustrations with the way the Certificate Program as contrasted with the Voucher Program works. There are some situations where tenants are unable to find landlords who will rent to them at the rent level restricted by the fair market rent system.

When the landlords under the Certificate Program are not allowed to charge more than the fair market rent, there are situations where tenants can't find a landlord who will rent to them because the landlord can't charge more than the fair market rent and the tenant can't pay more than 30 percent of adjusted income.

To deal with that problem, we don't need to do what the administration's bill would do, which is convert everything to the voucher system and require tenants who face that problem to pay whatever the landlord wants to charge, and pay it out of their own pocket. Instead, we can build on what is already in the existing law regarding certificates.

There is one exception in there that in limited circumstances allows tenants to pay more than 30 percent of their income for rent. The solution here is to build on that rather than to switch over exclusively to a voucher system.

That particular provision, which is section 8(c)(3)(b), allows tenants in limited circumstances to pay over 30 percent. It has to be in a case where the landlord will not rent at the fair market rate; the tenant is willing to pay the extra; the housing authority has reviewed the rent which the landlord wants to charge; and determine that that is a fair rent for the particular unit; the housing authority—although the statute doesn't require this—the housing authority should negotiate or help the tenant to negotiate to try to get the rent down to as low a level as possible; and then there have to be checks in the system to ensure that these exceptions don't become the rule, that this doesn't turn into a Voucher Program in which a large majority of the tenants have to pay more than 30 percent of their income for rent.

Some of those checks are already in the statute. One is a limit on the number of certificate holders who can pay more than 30 percent of the income. The statute which is in place now limits it to 10 percent of the incremental units that housing authority has. There may be some need for tinkering there, because that is a fairly low percentage of the units.

There is also a requirement in the statute that whenever a housing authority uses this exception for more than 5 percent of its certificate holders, it has to analyze why that is happening and file a report with HUD, which HUD then makes public to explain why it is that so many tenants are having to pay more than 30 percent of income.

Again, that is a vital check to ensure this system doesn't go awry and we don't end up with most of the tenants paying an excessive amount.

My own view is that it is possible to work out a resolution to this 30 percent cap problem that involves building on the existing law, rather than doing what the administration's bill proposes, which is to convert everything to the voucher system.

[The prepared statement of Mr. Bryson can be found in the appendix.]

Chairman GONZALEZ. Thank you very much, Mr. Bryson.

Ms. Flanary.

STATEMENT OF ALYCE FLANARY, VICE PRESIDENT-HOUSING, NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS, WASHINGTON, DC, AND DIRECTOR OF HOUSING, CENTRAL TEXAS COUNCIL OF GOVERNMENTS, BELTON, TX

Ms. FLANARY. Thank you, Mr. Chairman.

My name is Alyce Flanary and I am here on behalf of the National Association of Housing and Redevelopment Officials. We appreciate this opportunity to comment on H.R. 3400 and several issues relating to the Section 8 Programs.

My testimony will focus on three issues; a merged Section 8 Program; the setting of fair market rents, and the administrative fee paid to local agencies to administer the program.

We believe that a merged Section 8 Program should be incorporated in a 2-year reauthorization of HUD Programs. H.R. 3400, however, lacks several features which we believe are essential to reducing the confusion and paperwork for our tenants, the landlords, local housing authorities, and HUD.

I would take this opportunity to review some of the major concerns that we have with you. Families eligible for rent assistance should have incomes at or below 80 percent of the area median income as current law states. The bill would limit project-based assistance to those with incomes less than 50 percent of the area median. This would reduce local flexibility to house people such as the elderly and disabled who many times have incomes between the 50 and 80 percent of area median.

And except for the shopping incentive, tenants should not pay more than 30 percent of their income for rent. This bill would permit them to pay up to 45 percent of their income for rent.

We also believe that 50 percent of the new admissions to public housing in project-based section 8 should be exempt from Federal preferences. This would help to stabilize these buildings and projects and would avoid concentrating the poorest of the poor, many who have multiple family problems and are in need of intensive supportive services.

The Housing and Community Development Act of 1992 authorized a 30 percent Federal preference exception for project-based section 8. HUD is just now getting around to implementing this portion of the law. We believe this provision should be given a chance to work and not reversed summarily by this proposed legislation.

We also believe that the housing authority should have the option to set the rate standard for section 8 landlords based on their local housing market. This option should be in addition to a maximum HUD determined fair market rent. Such a local option we believe could more closely track local housing markets and avoid prolonged disputes between more than 1,000 local housing authorities and the Department over setting the fair market rents by HUD.

Annual adjustments to the rent paid to landlords should be calculated by HUD or the PHA, depending on which body develops the rent standard in the first place. H.R. 3400 is unclear on this point.

H.R. 3400 does not provide for a shopping incentive, and we believe this should be included. The local agencies should determine whether a shopping incentive for section 8 holders should be used, and if they permit a shopping incentive, the number of families permitted to use it should not be limited.

We suggest a cap of 50 percent of income on the amount that tenants would be permitted to pay for rent to live in less impacted areas in buildings with more amenities and neighborhood services.

Because the FMR is set at the 45th percentile of all rents in the locality, the tenants' choice of where they live within the locality is limited to those parts of town where the rents are low.

The fair market rent essentially excludes 55 percent of the units in a given jurisdiction because they are priced beyond the reach of section 8 tenants. Without a shopping incentive, section 8 tenants will not have the flexibility to truly choose where they want to live.

We agree with H.R. 3400 that the PHA should apply a rent reasonableness test for those residents wishing to pay more than 30 percent of their income for rent. H.R. 3400 permits portability of section 8 assistance but fails to compensate local housing agencies for the substantial bookkeeping costs and loss of section 8 which results from this feature of the program.

Current law requires that section 8 participants who do not live in the jurisdiction must reside in the issuing jurisdiction for 1 year after first receiving the section 8 assistance. The purpose of this provision is to reduce the loss of section 8 assistance from one locality to another and to reduce waiting list shopping by some perspective section 8 tenants.

What current law does not do, however, is compensate housing agencies for the growing paperwork and administrative costs of billing other housing authorities for the cost of rental assistance for tenants who have moved into their jurisdiction, nor does it make whole PHA's experiencing a substantial net outflow of section 8 tenants who take their assistance with them.

NAHRO would urge this subcommittee to rectify this situation by requiring a HUD headquarters reserve of section 8 assistance. We urge this subcommittee to increase the proposed 5 percent adjustment goal for section 8 rent adjustments to 10 percent, and require that the extra 5 percent be used to make whole the local housing agencies which have lost section 8 assistance through portability.

Local housing agencies receiving portable section 8 tenants should absorb the cost of their rental assistance, we believe, up to 5 percent of the total section 8 allocation or 25 percent of the section 8 turnover, whichever is less, before being made whole by the reserve at headquarters.

We also suggest a vacancy damage payment should be permitted at the discretion of the local housing agency. This would provide compensation to section 8 landlords for sudden tenant moveouts and apartment damage beyond the security deposit. We believe this is essential to retain landlords in the Section 8 Program.

H.R. 3400 provides a payment only for the month after the tenant moves out. We also ask that HUD be directed to allocate section 8 rental assistance dollars rather than units. This would enable the locality to translate those dollars into bedroom sizes, based on the local need. H.R. 3400 is silent on this point.

We urge the subcommittee to set a time certain for the Department to write regulations to implement the merged program. H.R. 3400 leaves rulemaking and a deadline entirely up to HUD.

As you know, the rebenchmarking of FMRs earlier this year based on the 1990 census threw thousands of housing authorities, section 8 tenants, and landlords into a complete tizzy. More than 2,700 of the 3,400 housing markets for which HUD calculates section 8 fair market rents were benchmarked at lower rents than had previously prevailed. The biggest concern was that affordable housing opportunities for low-income families would be severely curtailed.

NAHRO agencies were concerned that the proposed rents were so low that landlords would drop out of the program, and those that would remain would have only properties in impacted poverty areas. The effect on tenants would be devastating.

We strongly believe that alternative methodologies other than the HUD random digit dialing must be permitted. Such methods should be locally developed, statistically validated.

As the current FMR appeals process by 1,000 local housing agencies demonstrates, local market surveys produce more accurate rent levels that truly reflect the local market areas. Again, H.R. 3400 is silent on alternative methods to determine fair market rents.

We also believe that section 8 administrative fees should remain at the 8.2 authorized level. As you know, no local housing authority currently receives the full 8.2 percent, because HUD budget requests and annual appropriations have consistently been less than the full amount.

We urge this subcommittee to hold harmless at the 1993 administrative fee payment level all agencies which have a reduced fee because of reduced FMRs while permitting those with increased FMRs to calculate their administrative fee on the new FMR. We ask this hold-harmless be constituted until Congress enacts an alternative method of administering PHAs.

This fee set by law at 8.2 percent of the two bedroom FMR is supposed to cover the cost of PHAs of administering the program. We believe that an alternative method must be found. However, we do not believe that an alternative can or should be rushed into law. A number of unfunded mandates must be fully costed out and factored into the calculations.

These include the cost of administering the family self-sufficiency programs, section 8 portability, Federal preference determinations, and lead-based paint testing and abatement. Other PHA costs which are reimbursed by the 8.2 percent are annual recertifications

of tenant incomes, annual and interim housing quality standards inspections, community outreach to interested landlords in accepting section 8 tenants, financial monitoring and audits. And we understand that HUD is not sure at this time when it will complete its study on decoupling the administrative fee from fair market rents.

We commend you, Mr. Chairman, for holding this hearing now to look into these important matters of a major 2-year Reauthorization bill for next year.

I thank you for the opportunity to be here.

[The prepared statement of Ms. Flanary can be found in the appendix.]

Chairman GONZALEZ. As I said before, thank you very much for accepting this invitation, and coming all these many miles.

Mr. Churchill, I would like to point out that our long-time friend, Mr. Edson, is right behind you. Of course, I am sure he is there available to testify as well if the need arises. But I wanted to acknowledge his presence and also the fact that he has been associated with the working of this subcommittee, I know since I became chairman 12 years ago.

Mr. Churchill.

STATEMENT OF NEIL CHURCHILL, PRESIDENT, NATIONAL LEASED HOUSING ASSOCIATION, WASHINGTON, DC; ACCOMPANIED BY CHARLES L. EDSON, COUNSEL

Mr. CHURCHILL. Thank you, Mr. Chairman.

My name is Neil Churchill. I am vice president of the National Capital Corp., and president of the National Leased Housing Association, on whose behalf I testify today. I am accompanied by Charles Edson of the law firm of Peabody and Brown, counsel to our association.

Our testimony will involve extensive legal analysis of the administration's proposal. I ask leave from the Chair for Mr. Edson to participate in the presentation of our testimony.

By way of background, the National Leased Housing Association for over 20 years has represented all of the interests of developers, owners, housing authorities, State agencies, and others involved in the Section 8 Program. We are a unique organization in that in our early years our only concern was for the Section 8 Program. For that reason, we believe that the majority of the units developed under the new Construction and Substantial Rehabilitation Program involved our members.

Mr. Edson will first address the administration's proposal to eliminate the annual adjustment factor for the next fiscal year for these projects. I will then address the proposal to merge the Voucher and the Certificate Programs as well as the issues of administrative fees and the formulation of the fair market rents.

Mr. Edson.

Mr. EDSON. Thank you very much, Mr. Churchill.

Thank you, Mr. Chairman, for the kind words. Your introductory remarks really took me back almost 20 years ago. There are only three people that I can count who are in this room today who were in the room then. You as a member of the committee, myself, doing what I am doing now is representing the Leased Housing Associa-

tion, and Mr. Ray James, who was staff counsel then and indeed drafted most of the bill. I guess we can blame it on Ray if we don't like it. I don't mean to slight anyone. There may be others who will admit to being here 20 years ago, but those are the only ones I can count.

I believe you are the only member not only of the subcommittee, but I believe the full committee that was here in 1974, and there is a lot of history here that really bears on some of the issues that I will be discussing and will be discussed throughout this session today. Thank you very much for letting me participate on the legal part of it.

I am going to address a provision of the administration's Government Reform and Savings Act of 1993, which would eliminate the annual adjustment factor increase for section 8 projects for a year, and as you said, the administration says it would save $500 million, which it may do.

The proposal ignores one crucial fact, and that is that the owners' rights do not derive from statute. They derive from a contract entered into with the government. Section 2.8 of a typical HAP contract provides for annual adjustment factors to be published in the *Federal Register* annually, and on each anniversary date of the contract, the contract rent shall be adjusted by applying the factor to the current rent. It doesn't say "may be adjusted," but "shall be adjusted."

The owners have the right to that adjustment which averages about 3 to 3.5 percent. If the adjustment is too high and brings it above the rent level, then HUD has the right, which the Supreme Court has affirmed, to do comparability studies. But that is the only contractual way that HUD can do to keep down the increase.

The Supreme Court has held in several cases that the government cannot abrogate a contract with the owner, especially if the purpose is to save money. The law is a little bit more murky, admittedly, if the government comes up with some other rationale, and there is a whole raft of cases on it. This area has sort of been my subspecialty in the law because this has come up so many times through the years, as the chairman knows.

But the real no-no that I don't think any lawyer can deny is that if the purpose is to save money, the government cannot abrogate the contract. The administration in its proposal baldly states that the purpose is to generate budget authority and outlay savings, which is very, very improper. I don't think the courts would allow it to stand for 1 minute.

I can't believe the people at HUD who know the law came up with this proposal, as indicated in your statement. Their counsel may have had some doubts. I first heard about this proposal as we were preparing for the firm's Halloween party and I thought maybe the devil made them do it. The people at HUD are too smart, knowledgeable and sensitive to come up with this proposal.

Leaving the legalities aside, it really shakes the faith of the owner community. We have had the Preservation Act of 1990, a fair compromise, but HUD has been very, very slow in implementing it, and indeed 25 owners, including many, I might say, from your part of the world, Ms. Waters, in California where there is a

real problem, have gone to court to sue HUD on its slow implementation of the LIHPRHA Program.

You have changes in the tax law. Retroactively, if you add this violation on top of it, you will lose the faith of the ownership community.

Why is that relevant? Because one of the matters that you are discussing today is, what happens when these contracts expire? Will this property be kept as low income?

We have started to work on this as an association just as you have as a committee. We have a 40-member commission, very active, coming up with alternatives. The results of our studies aren't in, but most owners, the vast majority, want to stay in the program, want to keep the housing low-income voluntarily, which means I don't think we are going to have all the hassle of mandatory versus voluntary that we had in LIHPRHA, if owners can come to a fair agreement with the government.

And what would be most detrimental to this solution is if the government continues to try to abrogate the contract. It is just like if I leased to you for a certain rent and then came to you and said, "Gee, things are pretty tight in my budget; I am going to pay you less and am not going to give you your rent for the next few months," I think you would have a lot of problems with that. That is exactly what the government is doing.

And I don't want to kick what I hope is a dead horse, but it is a dangerous doctrine. What we are trying to do is to work out extensions of the contracts that will work out for low-income housing.

I will yield to my friend and colleague, Mr. Churchill.

Mr. CHURCHILL. Thank you.

We have long advocated merger of the Certificate and Voucher Programs, and are pleased to see the administration move forward with a proposal to accomplish it, but since it has been only 2 days since we received the language of this merger, we will make general comments and will be reviewing it in depth and submit our comments to the subcommittee in the next few weeks. We look forward to working with you on that.

It is our assumption that the proposal is called a Certificate Program but it sure does look like vouchers. There is an opportunity for the tenants to bear the burden of the savings, so they can pay more than 30 percent. We do recognize that rent burden on this is limited to 45 percent, which is a lot better than some of the 60 and 70 percent burdens paid under the Voucher Program.

We applaud the fact that the shopping incentive is not going to be part of the program. The statistics show that the shopping incentive really just reduces the income burden on people in place and reduces housing for new families.

We would like to see the project-based assistance continued. We like that it is there. We would like to see it be a full 30 percent.

The National Leased Housing Association supports the fact that there is a pool of certificates on a national basis to take care of portability. But we don't want to see the funding of that pool taken away from the fair share needs of the communities.

NLHA believes the current method of calculating the fee on administration of the program—using two-bedroom fair market

rents—is inappropriate. It fails to take into account the true cost of the program.

We strongly support a comprehensive and detailed study of the cost of administering the Section 8 Program today. The studies currently relied upon by the administration are faulty and completely out of date, as they do not reflect the increase in administrative costs associated with family self-sufficiency, implementation, increased portability, and so forth.

We strongly want a simplified fee structure, one that is fair and streamlined and does not by itself increase the administrative burden. But we do believe there needs to be a study with appropriate methodology for establishing that fee.

On the subject of fair market rents: NLHA has long supported modifications to ensure more accurate fair market rents. We have questioned for a long time whether they are done appropriately and whether the process of appealing the fair market rents really works. We support legislation that would require the use of subarea fair market rents that take into account the specific situation in an individual area.

We also would like to see a system that is more easily dealt with than the random digit dialing system. It is our experience that in doing these studies, it costs a lot of money, $15,000 to $50,000, and that the study really may not be accurate. Cost alone, however, makes it almost impossible for a lot of housing authorities to do this study.

HUD says they will accept other studies, but they generally don't. We would like to see fairness to all parties involved in providing housing for low-income families.

We thank you for this opportunity and we look forward to working with your subcommittee in the future.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Churchill can be found in the appendix.]

Chairman GONZALEZ. Thank you very much.

Mr. Shuler.

STATEMENT OF THOMAS R. SHULER, PRESIDENT, NATIONAL APARTMENT ASSOCIATION, WASHINGTON, DC, AND MANAGING DIRECTOR, INSIGNIA FINANCIAL GROUP, INC., GREENVILLE, SC, ON BEHALF OF THE NATIONAL MULTI HOUSING COUNCIL AND THE NATIONAL APARTMENT ASSOCIATION

Mr. SHULER. Thank you, Mr. Chairman, for this opportunity to be here today.

I am Tom Shuler, president of Insignia Management Group. I am here representing the National Apartment Association, for which I will be the 1994 president, and the National Multi Housing Council.

Our industry is working to support quality, accessible, and affordable rental housing. We believe section 8 does need rethinking to serve its purpose to provide low-income families the broadest possible access to well-managed, affordable housing.

I am going to try to answer a number of the questions you posed to me drawing on my 20-year experience in housing management. I believe that sound housing policy starts by recognizing that local

housing markets differ greatly, not only from area to area, but from time to time.

Federal housing assistance must comprise several approaches tailored to different local market conditions. Congress can accomplish most for affordable housing by providing a sound business and financial environment for the private multihousing sector.

Tenant-based rental assistance is most appropriate when a local market has an excess supply of good housing. However, it does not provide a supply stimulus, because fair market rates are below levels needed to support construction or rehabilitation.

If we are to increase the country's supply of affordable housing, project-based assistance in some form will be needed, along with capital subsidies to reduce the cost of production, and credit enhancement to attract private lending. There is still a clear need for public housing also.

You have asked for alternatives for determining fair market rents. We have heard here this morning a number of comments relative to that topic. I would like to take a moment to explain how the private sector deals with setting market rents.

Owners of a property shop the competition. They review what rental rates are published and what discount programs are in place. They physically compare their property to the competing properties, look at amenities, make a comparison, and make an estimate as to what they feel the true market rates are. They will create an asking rate for that unit.

If that unit doesn't rent, the actual rate isn't meeting the market. They have to readjust the rent, they have to add some concessions, they have to take other action to make that unit marketable at that particular time in that specific local market.

Residents have choices in what they are looking for, and in making those choices they set those market rents. The current rent roll of any existing apartment complex reflects the market rents that that property has been able to achieve within its specific market. And, in practice, frankly, the rents that the owner has been able to achieve in the last 30 to 60 days in its leasing effort dictate what the current market rate is for that property and those units in that market.

You have to remember, though, that each unit is an individual, unique unit. Identical rates aren't set for all one bedrooms in a property. They are set for each unit due to its characteristics and unique factors.

Also, revenue that a property produces is both a result of the occupancy and the rates that that property is able to command. And the income stream that that property is able to generate must cover the operating costs, the maintenance and capital improvement needs of the property, and ultimately provide an acceptable return to the investors that built the project and invested the funds to have it there in the first place.

HUD's fair market rent standard must reflect these real market dynamics. Merging the Section 8 Voucher Certificate Programs is moving in the right direction. They must be made acceptable as elements of normal business practice to owners and managers in the private market.

Most owners are reluctant to participate in the Section 8 Program due to the bureaucratic process, the administration, paperwork, and other aspects that interfere with sound management practices for a property. Congress must remove problems in the program that discourage an owner from participating and remove those practices that conflict with sound management practices that are established as part of their normal business routine.

To help ensure that responsible suggestions will get a fair hearing, the National Apartment Association and the National Multi Housing Council have asked the nationally recognized research firm, Abt Associates, to prepare a policy action report with their recommendations for improving section 8 so that it is more acceptable to property owners, while not sacrificing the program's public purposes.

Congress should work closely with the professionals within the multi-housing industry. We are here to help you and this subcommittee achieve quality accessible affordable housing for all Americans.

Thank you for the opportunity to be here.

[The prepared statement of Mr. Shuler can be found in the appendix.]

Chairman GONZALEZ. Thank you.

Mr. Graziano.

STATEMENT OF PAUL T. GRAZIANO, DEPUTY GENERAL MANAGER FOR OPERATIONS, NEW YORK CITY HOUSING AUTHORITY, ON BEHALF OF THE COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES, WASHINGTON, DC

Mr. GRAZIANO. Thank you, Mr. Chairman.

It is an honor to be here today to speak before you and the other subcommittee members. I appreciate the opportunity, and I appreciate your having these hearings on this important subject.

My name is Paul Graziano. I am deputy general manager for the New York City Housing Authority and, as such, oversee all their public housing and section 8 operations. Previously, I have been the executive director of one other housing authority and worked in two other housing authorities, so I have operated in authorities ranging from small to medium to large to New York, whatever you call New York, extremely large, I guess.

We have 63,000 units of section 8 certificates and vouchers in New York, so clearly we have a stake in this program. I am a member of the CLPHA policy steering committee and a vice president of National Leased Housing as well. My testimony today is on behalf of the Council of Large Public Housing Authorities.

I would like to say that the Section 8 Program has served us well in its various versions, whether it be new construction, substantial rehab, moderate rehab—which is really not a subject of this hearing today, although I would say there are some problems with that program in terms of preservation that we need to look at as well.

I think the diversity of housing issues in this country and challenges requires that we look at where we are today, especially with the Certificate and Voucher Programs, and we look toward an expeditious merger, but a merger that is carefully thought out. I

think that we need to provide a streamlined program with maximum local discretion.

I happen to believe that the elements that separate the two programs now are not many, and that with some careful thought we could get to the point where fairly quickly we would be able to merge the two in a thoughtful way without harming the basic tenets of the Section 8 Program. I think, though, that we should design a program that while merged, is also dramatically streamlined and provides for a maximum local option.

I think one thing that has happened in recent years, which though well intentioned, has hurt us, is the proliferation of specialized Section 8 Programs; in other words, targeting of various pieces of the Section 8 Certificate or Voucher Program for special purposes. Whether it be self-sufficiency or family reunification or elderly independence, all programs which have admirable goals, they have created a lot of work for HUD and a lot of work for local PHAs, such as a separate NOFA process, separate applications, separate bookkeeping, separate administration of these programs. The problem is these requirements are handed down from Washington.

I would argue that a properly designed merged program would enable us, with local discretion, to design local programs to address and resolve local housing needs, and that Congress could perhaps give some broad guidelines or mandates as to what we should try to address, but not to have the tailored and targeted specialized programs.

I would also argue in the National Affordable Housing Act, when the comprehensive housing affordability strategy concept was established, it created a perfect vehicle for monitoring that local discretion, which is to say we could tie in the use of section 8 at the local level to the CHAS process in the local community. And I think that would be a very important way to give local discretion while also maintaining some oversight at HUD.

As part of the local discretion, I would lift, for instance, the 15 percent cap on use of section 8 for project-based assistance. I would have no cap. In fact, I call in my testimony for full fungibility between tenant and project based at the discretion of the locality, determining what their needs are.

In other words, if they have a need for a production program, they might want to put the section 8 into production. If it was preservation, put it into rehab programs. If there were an ample supply of housing of decent quality, then maybe just a tenant-based program would be adequate. But a local discretion there on how to do that I think would be very helpful. So a merged program but with a lot of local flexibility and tied to the CHAS process to me is a very important overall approach to this program.

I talked a little bit about the various versions of section 8 going from new construction all the way through the Certificate Program. Unfortunately, about 10 years ago we had a complicating factor added, which was the Voucher Program. It started out as a demonstration, and then went on from there, as you know.

The problem is, I think, that most of us knew intuitively what the difficulties were with the Voucher Program long before the demonstration started, but then even giving the benefit of the

doubt, shortly after the demonstration began, there were other problems with the program that became apparent.

So I think we have now spent at least the last 7 or 8 years in a duplicative effort which is wasteful of our time as PHAs and of HUD's time, and frankly of Congress' time, having to constantly reconsider this issue and being asked to debate and work on it.

I think we do need a program that is merged. I think it is clear we should be headed primarily, fundamentally toward the Certificate Program, although I think some flexibility as created by the Voucher Program, some flexibility is appropriate, and I will talk about that a little more in detail.

I know the administration had moved toward merger with a conforming rule last February. Unfortunately, that rule was not particularly useful because without the statutory changes, they could not implement a complete merger. So what we were faced with there, and the reason why CLPHA strongly urged they not publish that rule for effect, is the prospect of four different rules in 1 year, which is to say the two current rules, one for vouchers and the other for certificates, the conforming rule, and then if Congress were to pass the merger rule you would have to publish another rule to fully merge.

So what you have is HUD having to publish two different rules, housing authorities dealing with four different rules in a timespan of perhaps a year, which is totally insane. So whatever you do, I think, you want to make sure that HUD does not publish a conforming rule until you can complete the merger for the statutory requirements.

Sometimes people do these things thinking, well, at least we are heading in the right direction. But incremental change here is not what we need. We need the complete merger.

The elements of the new unified program, which I think are most important, I have enumerated in my document, but briefly they are that the shopping incentive credit and the payment standard method of assistance must be abolished. And I will go through these and discuss them as I go along.

The shopping incentive credit has wasted millions of dollars over the last 10 years that have gone to people who truly did not shop.

In New York City, for instance, we estimate that 85 percent of our voucher recipients lease up in place, and if they happen to be in a unit that falls below that payment standard, they get a windfall shopping incentive credit. They haven't done any shopping but they have paid something less than 30 percent while other people who are out there looking for new apartments traditionally end up paying significantly more than 30 percent.

So there is a real inequity factor there between the people who are the winners through the windfall of having a lower rent because they are in place, and the people who are out there searching and because the market is tight have to pay more. And that comes out of their pocket.

It is a wasteful program which we have argued for years should be abolished. The President's proposal calls for its abolition.

I think there are some questions that this subcommittee might want to consider about what to do with the savings from the abolition of that shopping incentive credit. I would suggest that money

could be used to reduce the program cost; to increase the number of units that we assist; to expand the accessibility and affordability above the fair market rent rentals, in other words, use some of those dollars to get people into units that are above the fair market rent; to get into other markets, let's say, a broader range of the market; or to help fund the anticipated renewals without reducing the ACC terms.

But I would suggest that the subcommittee needs to look at those several options as to how to utilize those dollars saved. Right now they are being used for no useful, productive purpose.

A second element of an essential merger program would be to expand and reform the excess rent component of the Housing Certificate Program. I would argue that I have no problem with somebody choosing to pay more than 30 percent of their income for their rent burden, as long as there are protections, and I think the basic protection is that the FMRs have to be adequate so that they are not put into a position where they are forced to pay more than 30 percent, and I think that is where the last bill talked about reviewing FMRs, if an excessive number of people go over the 30 percent burden. I think it is essential that the FMRs be established at a level that we don't rely on that exception to get decent housing.

I would propose beyond that, however, that there are three alternative methods for computing some sort of cap on rent burden. One would be to take a percentage of the tenant's income. Now, you could say 30 percent. I would argue something a little bit more than that because there are situations where people might want to pay a little bit extra for whatever reason to get that different unit. So some sort of cap. We recommend 35 percent.

A second alternative cap would be a percentage above the applicable fair market rent. So, for instance, you could say, nobody could rent a unit beyond 120 percent of the FMR, and forget what the rent burden is, just nobody can rent beyond 120 percent of FMR.

I have a problem with that in that that is sort of a regressive system which says the lower your income, the greater your rent burden is because it would be a higher percentage. If everybody is going up to the same maximum rent, you are going to pay a higher percentage of your income if your income is lower. So it is inversely proportional.

So what we would propose is a combination of the two; a cap on rents at 132 percent of the FMR (which is essentially the 120 percent exception plus 10 percent) and nobody should pay more than 35 percent for their burden.

So I think if you take the two, an absolute cap on the rent levels and then a cap by individual tenants on their rent burden, we can provide protection while also providing flexibility. If you tie that to reasonably established FMRs, I think it is a very workable system, respecting your basic concern about not having people paying excessive rents.

I think the fair market rent, the housing quality standards, and the rent reasonableness standards are three other basic elements of this program. In fact, I think there are four. The FMR, the housing quality standards, the rent reasonableness standards, and the cap on rent burden, as I just described, are to me the four pillars of the Section 8 Program. Those are the essential elements. If any

one of those is missing, the program will be defective. Anything beyond that would complicate the program.

As I pointed out in my written testimony, the original Voucher Program did not include rent reasonableness, and I think you know that that omission was extremely costly. There were all kinds of rent-gouging situations, because housing authorities were prohibited from commenting on rents. Now that it has been included, it should be retained in any merged program.

I have mentioned the importance of having the fair market rents established at an appropriate level. There are serious fair housing implications to that issue. If you artificially suppress the fair market rents, you are going to concentrate people in areas of economic and racial impaction and prohibit them the opportunity to expand out into other areas. We need to have housing quality standards.

The term of the ACC contract should not be further reduced. That is another basic tenet of this merger program. We think 5 years is the absolute minimum we could deal with. If you reduce it further, you could create tremendous backlogs with HUD on renewals and that could create a serious problem as well. They have a tough enough time renewing contracts every 5 years without getting into shorter terms.

Also, with respect to our private sector apartment owners, I think it sends the wrong message. When you start reducing the term, it brings into question the basic commitment of the program.

Finally, the Project-based Certificate Program: Project-based assistance barely works at 5 years. I think it would be seriously crippled if you reduced it beyond that.

I think flexibility in unit distribution was mentioned by one of the previous folks up here. I think that is one place where the Voucher Program is actually better. They give you a pot of money and say, You can mix it up any way you want.

The only caveat there is Congress should establish a benchmark to ensure that through some kind of freeze or reductions in appropriations, we don't lose units; in other words, to say if you allocated some sort of theoretical number of units (stated in two-bedroom equivalents) and then tracked that over time to ensure no loss, we could then adjust the actual bedroom distribution any way we wanted.

People have talked about affordability. I would agree with all the comments there. I won't cover that any further.

They talked about the fair market rent process. I stress the fair housing aspects. I also agree as testified before that the random digit dialing requirement really stifles comment on that important yearly event.

The administrative fees I think should be decoupled from the fair market rent. We need to look at something that really addresses the real costs of operating the program.

One concept not mentioned before is the fair market rent to cost index ratio. I have worked in Boston and New York and until recently the FMRs in Boston were much higher than New York City. However, the cost of doing business in New York was at least as high as Boston, but we were getting significantly less administrative fee per unit because it was tied to the FMR. That would be one thing to consider.

Project-based assistance, I think we need to do certain things with the PBA to make it workable, and to deal with the term and so forth.

I mentioned the Mod Rehab Program. I think you need to look at the need for additional capital improvements in these projects, which started 15 years ago or 8 to 10 years ago and are in serious disrepair.

You asked about the new construction and substantial rehab and the freeze in the rents. We have in New York City eight section 8 projects, 980 units the housing authorities owns. We are operating at a current operating loss of $550,000 a year for those units. So any kind of freeze would hurt us seriously, I am sure it would hurt others. We have a $7 million unmet capital need there as well.

Finally, I would just say lead-based paint is another area we need to look at in creating financial incentives in the Section 8 Program to deal with that issue.

I thank you for the opportunity to testify here, and I would be happy to provide any elaborations.

Thank you.

[The prepared statement of Mr. Graziano can be found in the appendix.]

Chairman GONZALEZ. Mr. Edson, you were mentioning about the fact that maybe an outsider like myself and two others were the only ones here 20 years ago. To the chagrin and keen disappointment of my detractors, I have survived. And actually I have been on this subcommittee for 32 years. And I came aboard at a time—there was a fight every inch of the way. The chairman was the Alabaman at that time, and there were seven members of the subcommittee, and in order to get me on it would force them to raise the number to eight, and he protested vehemently, but unknown to me, I had worked with and for Ms. Marie Maguire, with the Senate public housing, and President Kennedy named her the Public Housing Commissioner, and when she saw I was coming up here and was assigned to the Banking Committee, she then intervened somewhere.

All I know is that Speaker McCormick called me and said that there was a desire on the part of the White House for me to be on the Subcommittee on Housing. I said, fine. But I didn't realize that the chairman of the subcommittee was a little reluctant. So I made number eight.

And so I have very good recall, and I have watched the whole course of events when we went into the 1970's, and the same thing that you hear today, and the advent of what I call—what I saw the first time I served in the public elective office back home on the city council 40 years ago, 40 years and 7 months ago—and that was that the practice was to kind of wet your finger, put it up, see which way the wind was going, and then try to go that way. I felt that was not serving a public purpose, that if you had a problem, you had to face it.

But now, since—and particularly the 1970's, and this permeates the entire spectrum of political effort—the idea is not to figure out the problem, but figure out the handles. So when we went into the 1970's and then we went into the block grant approach and the exponential increase in the number of grants and subsidy programs,

well then this became a very attractive subcommittee. And, in fact, it became so attractive that just two Congresses ago, there were only four members of the full committee that didn't belong to the subcommittee. So we had to go to the rules and the caucus and demand a 70 percent limit, that no subcommittee be larger than 70 percent of the total committee membership, and then last Congress we amended that further to 60 percent, of this Congress. So it still enjoys that.

However, as in the case of other areas of public office activity, you had a combination of events, all with the best of intentions, like reform in 1974, that have contributed to the erosion in the institutional integrity of this body, and therefore the processes.

So we are sitting here and we are talking about programs that date to about 1974. And I just happened to mention one, the Turnkey Program, just like who talks about Gramm-Rudman today, and yet that was life and death, because that was, as we do now, going to solve it for now, or we think it will. And nobody is examining, first, the underlying causes, then the immediate causes of that problem, which require some sustained, thoughtful approach.

As I see it, and as I go around and particularly in my backyard, it is very, very disconsoling, almost depressing to me to see, with all this myriad activity, as far as housing is concerned, we have a worse problem than when I became chairman, and much more than when I joined the committee 32 years ago, believe it or not.

Then I remember my efforts in San Antonio. I was a college student and went to work on behalf of Reverend Father Casey on the west side, who was a champion and advocate of public housing. When we use the public housing phrase, I want to admonish the witnesses that we want to differentiate between conventional public housing, which has such a pejorative sense, and what is an attempt to substitute for the conventional.

But what I see, for instance, back home, the public housing, the San Antonio Public Housing Authority, has a waiting list of 15,000, and that doesn't count several thousand that dropped out.

I have gone and checked with families that live in pretty bad conditions, and have sensed the overcrowding, and therefore watched the issue I first raised in 1983, which is the year that we got what we—I have always said it is always too soon to brag so I didn't brag then, but it was the second year of the Reagan administration, and looked upon askance, as maybe something new, but it really wasn't, and it was the Housing Act of 1983 that provided the shopping incentive. That we had to compromise. We couldn't have gotten anything, that was shoved down our throat by the minority, and then my colleague then from Texas, who is now the mayor of Dallas.

And we tried to argue, foreseeing what every one of you have related here. But that Housing Act recalled the Housing and Urban and Rural Recovery Act, because we mentioned that we were beginning to witness the homelessness, and the incidence of conditions that I hadn't witnessed since the Depression. I have been living that long.

So, Mr. Edson, let me put it this way. When I came out with that, one of the housing newsletters said. That this may be Gonzalez' last hurrah, because I was challenged when I came up for

chairman of this subcommittee. I have been challenged every inch of the way, just like in the beginning, joining the full committee and subcommittee. The full committee consisted of 30, I made 31. Today it is 51.

So things change, not necessarily for the better, but we are always imbued with the optimism that in America we have a progressiveness of improvement. And I believe in that. I think that we have steps forward and then some back steps, and we are coming out of that, but I don't know how far is the needed speed to avoid what I have said is not inevitable, and that is very complicated social dislocations in our country. Time will tell.

They will be made to look as if they were unavoidable, but I believe they were certainly avoidable. And with respect to the specific issues here, I will submit some questions in writing to enlarge on very good, comprehensive statements, and I am very grateful to you.

I will just indulge, because of the fact that we have fewer members, and it is still before noon, by taking the liberty of asking consent to ask maybe two or three questions now, and then submit the rest later.

I was going to ask Ms. Flanary, because you are right in the middle, not only on the national basis, but back home, I saw your statement and the geographical area that you are responsible for in the COG. I am wondering, has your agency back home, has it conducted an alternative housing market survey? In other words, in an effort to determine the validity of the HUD proposed fair market rents?

Ms. FLANARY. Yes, Mr. Chairman, we have. The area that we cover is a seven-county area. Two of those counties make up a metropolitan statistical area. The other five counties are rural counties, and we have done our own surveys on that.

In doing those surveys, we contact property owners, management companies, and if all else fails, even knock on doors. I feel that we get some very good information on doing those surveys, on not only the type of the unit, the age of the unit, right down to what the utilities are in the units, what census tract it is in, whether it is occupied or vacant, whether it is being assisted, or whether it is an open market unit, which goes quite a bit further than the RDD surveys required by HUD at this time.

Chairman GONZALEZ. Do you have any estimate of what it costs your agency to perform those surveys?

Ms. FLANARY. Yes, I do. In fact, because we did both our own surveys and we did the RDD. For an MSA it costs us approximately $15,000 to do the required RDD. Per county, on the surveys we completed ourselves, I would estimate between $1,500 and $2,000, is what it costs.

Chairman GONZALEZ. What about the HUD random digital survey or dialing survey? What is the cost of that to your agency?

Ms. FLANARY. To our agency, that was $15,000, to do the RDD.

Chairman GONZALEZ. And in your seven-county area, about how many families and seniors are on the section 8 waiting list?

Ms. FLANARY. At this point in time our waiting list is actually down some. It is approximately 600 at this point in time.

If I may elaborate just a bit on that to explain, our particular agency had a reduced FMR a year ago. Due to that reduction, we have issued certificates and vouchers that the families are unable to make use of because they cannot find units within those reduced rates.

A year ago, our waiting list was well over 1,500. Now it is down to 600. No, those families have not all found units.

Chairman GONZALEZ. You mentioned something to the effect that they couldn't find them. Is there a scarcity of existing housing?

Ms. FLANARY. There is not really a scarcity, but within the rent limits that were set. An example of that we personally tracked. In 1 month we issued 150 certificates and vouchers, and we tracked that until expiration.

The families that were successful in finding units that were within the rent limits and that could pass an HQS inspection that they are safe, decent, and sanitary, the success rate out of that 150 was only 11. And it is not that good units weren't there. It was that they could not find them within the rent limits.

Chairman GONZALEZ. Gee.

I was going to ask Mr. Shuler, before I turn it over, I believe you said that most owners do not seek to participate in the Section 8 Program. What would you say is the percentage, approximate percentage, of those that do?

Mr. SHULER. I am not certain that I could really give you an accurate percent.

Chairman GONZALEZ. If you are able to do that for the record.

Mr. SHULER. I would be able to research that and get that back to you.

Chairman GONZALEZ. We will give you a chance to look that up.

[The information referred to can be found in the appendix.]

I believe you stated as clearly as it could be why you would explain that section 8 is not more widely accepted.

Mr. SHULER. Mr. Chairman, there are a number of reasons why it isn't widely accepted. A majority of the private sector doesn't want to step into the program, just because the various regulations relating to the rent-setting structure are very behind the times. They aren't current as to what current market rates are.

One of the key requirements for the program is to get a true market rate. And I described earlier in my testimony how industry approaches that task. But it does it on a current basis. The section 8 rent structures in many cases are 12 months, 18 months behind the current times.

Second, there is also an extreme difficulty created by the eviction process as regulated through the Section 8 Program. In fact, it treats residents differently. Professional managers usually refer to a multifamily property as "a community." A resident within a community should have the same rights and same responsibilities to that community, and accordingly, if there are violations, there needs to be a process to be able to evict that is equitable to all residents.

Third, there is an unpredictability of the revenue stream under section 8. The uncertainty regarding limitations on the rent, the increases, the definitions of rent reasonableness—this all comes to bear on an owner who is trying to provide quality housing but isn't

geared to handle the administrative reporting and other regulatory burdens that come along with participating in the program.

And one of the last points I would like to bring in is the tenant selection process. There is a need to help truly evaluate an appropriate tenant for a property, help in getting background information that may be available to HUD but isn't made available to the owner in being able to evaluate that selection process.

So there are a number of inconsistencies in operation. An owner must look at all residents, all tenants, of the property, and be able to treat them equally in the process. Frankly, section 8 imposes regulations and burdens that don't allow that to happen.

Chairman GONZALEZ. Do you have any comment, Mr. Churchill?

Mr. CHURCHILL. I think that what Mr. Shuler said is true. You tend to have properties that are subsidized, where the owners are dealing with the entire project. They set up systems to administer the programs, and they deal with it.

If you are getting a unit here and a unit there, in the efficient operation of that project, they have a system, and if the HUD system and the certificates don't fit into it, then that is a difficult situation.

So they are also dealing with people as far as their ability to pay their rents are much greater on the regular market rate people and who they would accept. And if the most difficult thing is getting a tenant who is not doing what you want to do out with a certificate, the last thing you want to do is take somebody that is going to exacerbate that problem.

So I think the concept of mixed income and all of this, while very good in theory, we usually have some real hook that it is done. It was tax-exempt financing so they have got a requirement to do 80 percent, or tax credits, or some other reason that motivates the owner to take the certificate holders. Maybe it is just project feasibility, and they really need to get tenants in there. But if the project is working well, that is the least desirable tenant that you want to put in.

Mr. EDSON. If I can add one point, I believe the 1987 act provided that if you have one section 8 tenant, you can no longer refuse to rent to section 8 tenants. That might be good policy, but you might want to rethink it, because many owners are reluctant to take that first step because it is irreversible after that point.

Chairman GONZALEZ. Mr. Bryson.

Mr. BRYSON. Mr. Chairman, actually two points I would like to address. One is the question of evictions under the Section 8 Program.

There is a requirement in the Section 8 Program that tenants not be evicted unless there is good cause to evict them. That requirement has been there since 1981. It is there to protect tenants from being evicted in retaliation for their having raised some complaint or other arbitrary actions by landlords. And it is a requirement that exists with all of the other federally subsidized housing programs. And it is not one that would be a good idea to get rid of, at least from the perspective of the tenant.

Chairman GONZALEZ. That is a general requirement, that they should not be—except for cause. But eviction processes, aren't they usually governed by the local law?

Mr. BRYSON. The eviction process under the Certificate Program is the same as it is in the private market for any other landlords. It is whatever the State court requires. The only difference is this protection against being evicted without good cause.

The other point I would like to address is the question of the requirement in the 1987 act that landlords who participate in the program not refuse to accept certificate holders. I do acknowledge the concern that Mr. Edson raised; namely, landlords are reluctant to take the first step if they feel that doing so will make them be unable to screen other tenants.

There is a way out of that, and that is to broaden the nondiscrimination requirement, and prohibit any landlords, whether they have already participated in the program or not, from rejecting a tenant merely because they would be a certificate holder.

That would make the program work much better, because no landlord would be able to say, I am not going to take you because if I take you, I am going to have to take other certificate holders. I think there is power within the Congress to establish that kind of a nondiscrimination requirement.

Chairman GONZALEZ. Mr. Edson, did you have——

Mr. EDSON. I thought that was a very thoughtful answer. I think you may want to think about it before imposing that requirement. I guess it would be analogous to a civil rights statute. It is something worth thinking about.

Chairman GONZALEZ. Mr. Graziano.

Mr. GRAZIANO. I would point out on page 7 of the CLPHA testimony, we did comment on that same issue, and we argued that we felt the provision as currently written does create disincentives and we would argue it should be abolished. In other words, once you are in, you can't reject. But that what we suggested alternatively is exactly the model that says that housing discrimination based on source of income or receipt of subsidy would be illegal, and that should be an amendment to the Fair Housing Act.

In the State of Massachusetts where I previously worked, the statute does include income, source of income, and receipt of housing subsidy under the fair housing law. And so I think it is something to put you on equal footing. I think it is a very good idea.

Chairman GONZALEZ. Thank you very much.

I would like to—oh, yes, Mr. Shuler.

Mr. SHULER. Just one point further on that. I believe one of the key objectives must be to design section 8 so that people will want to be part of the program. We shouldn't try to paper over design flaws by legislatively mandating participation. We should design section 8 so that people want to be part of the program and join the program. And I think there are ways, one of which we are starting in with the merging of the Voucher and Certificate Programs. But there are a number of other legislative regulatory roadblocks that should be removed.

Too many times I think government has said, "here is a microproblem with a very small part of the industry. We are going to create legislation to stop that abuse from happening. But the result can be counterproductive. You want to increase the willingness of 90 percent of the rental housing market out there to jump on the bandwagon, to open up opportunities for good housing. And try-

ing to legislate participation while still having all the burdens that conflict with effective business decisions doesn't seem to make sense. There are ways to modify section 8 so that professional managers and owners will want to join the program.

Chairman GONZALEZ. I want to point out, because I have taken a little bit longer than I should have, that as far as HUD goes, what was published on October 1, 1993, in publishing the FHRs, HUD commented it had received 120 comments covering more than 1,100 market areas.

So HUD has decided to delay the publication for 612 areas so that reviews could be completed. The October 1 *Federal Register* includes rents for challenges which were successful, the new rents where there were no challenges or an unsuccessful challenge, and the 1993 rents where a review has not been completed.

HUD expects to publish a second regulation later in the year for the 612 markets. So you can see that they are batting that around.

Also, Mr. Graziano, you were talking about the savings associated with that shopping. OMB doesn't list any savings associated with the certificate-voucher merger, should that come about. In other words, it is not projecting any savings. So that is the ever-constant dilemma that I am sure the Administrators of HUD have to confront, and that is that they still are overseen by OMB in this one particular case. It is interesting to note they are not projecting any savings as a result of the merger they are recommending.

Mr. GRAZIANO. Simple logic would tell you that that can't be true.

Chairman GONZALEZ. So with that, Mr. Knollenberg, you have been here from the beginning. I might say, unless you have to leave——

Mrs. ROUKEMA. I do.

Chairman GONZALEZ. Would you yield?

Mr. KNOLLENBERG. I would yield to Mrs. Roukema.

Chairman GONZALEZ. Also, let me ask consent that you place any opening statement you may wish in the record.

Mrs. ROUKEMA. That is the purpose for which I speak, Mr. Chairman.

I will tell the panel I am sorry that I wasn't here. I will be sure to review your testimony, and will pledge myself to work in a cooperative way on this subject, hopefully working reform into next year's reauthorization.

But in any case, Mr. Chairman, earlier our colleague, Mr. Knollenberg, brought to the attention of the panel the interest Mr. Thomas of California had in testifying here today. Unfortunately, that was not possible, but he has legislation that deals with the question of calculating fair market rents.

In California there have been problems with them being overpriced. The anomaly is exactly the opposite of what Ms. Flanary described. But I would like unanimous consent to include his statement of testimony in the record on behalf of his legislation.

Thank you.

[The prepared statement of Mr. Thomas of California can be found in the appendix.]

Chairman GONZALEZ. Mr. Dooley is a member of the committee also.

Mrs. ROUKEMA. Thank you, Mr. Chairman. Yes, Mr. Dooley is a cosponsor.

Mr. KNOLLENBERG. Thank you, panel.

The question I have is I guess maybe directed more to Mr. Edson, and Mr. Churchill. Perhaps we can get some other comments from the rest of you. But the question is in regard to the administration's reinventing government proposal.

As you noted, correctly, it called for a 1-year freeze on the annual adjustment. I acknowledge the points that you have made about the government's contractual obligation, at least if the change is made for purely budgetary reasons. But I would like to suggest to you that the Congress can make fundamental policy changes, based on the fact that government subsidized rents should be based upon a true cost method.

The times are changing in this country, as you well know, and people want to reform government, thus this bill, obviously. But I have constituents who have a hard time accepting the fact that they are asked to pay $900 when in fact the market dictates rents of around $600. We have gotten plenty of testimony on that, one clip from the folks in California, and then one, of course, from the *Washington Post.*

I would appreciate your comments on this, and if you would, also, please comment on the proposal by the administration to cut administration fees from 8.2 percent to 6 or 7 or 7.5 percent. Some of the others of you may want to join in.

If you happen to be opposed to both of these proposals, perhaps you have some other thoughts about streamlining HUD. So I will turn it first to Mr. Edson and then to Mr. Churchill.

Mr. EDSON. Thank you, Mr. Knollenberg.

I guess a number of responses. Probably, in some parts of the country, in some instances, I would concede that your section 8 rents are higher than market. There are historic reasons and perhaps some economic reasons for the higher cost of producing that housing.

Indeed, historically there was what was called an initial difference that placed the section 8 rents higher than comparable rents to take into account increased cost of financing, Davis-Bacon, and other factors. They ran from 10 to 20 percent, and the contract protects that right to initial difference.

I want to emphasize again that these were contracts entered into in good faith by the owners with the government. I have to respectfully disagree. I don't think the government can abrogate a contract just to save money. In national defense, you can abrogate a contract to purchase all the aluminum supply if the government needs it for the war effort. There the courts have shown more leniency.

I think the remedy is, these contracts are about to expire in the next 3 to 5 years, and then take a look at the rents and to negotiate them in proper fashion. But I am afraid if you abrogate what you think are bad contracts today, you will not have good contracts tomorrow.

Mr. KNOLLENBERG. Mr. Churchill.

Mr. CHURCHILL. I have to agree with Mr. Edson. There may be situations where rents have gotten out of hand. I think in large part that is probably bad administration on the part of HUD over

the years. We have had a situation where they have never implemented part of the regulations dealing with the automatic annual adjustment factor that deal with curtailing rents by comparability studies.

The program has been in existence since 1975. That was reserved when the original regs were done. And I find that unconscionable, that over this period of time, how many years it has gone, it is they have been put in place. There were regs put out for comment in October 1992. They have not been finalized.

I believe that those regulations, the court case, everything else gives HUD a perfectly legal, logical method for addressing rent structure, which is appropriate. I think that it is absolutely unacceptable to think that you enter into a contract to do something——

Mr. KNOLLENBERG. Let me back up just 1 minute. You say it is possible now to deal with that, but yet they are not dealing with it in the instances I have just described. At least——

Mr. CHURCHILL. I cannot comment on magazine or newspaper articles that I know nothing about, whether they are appropriate or not, the discussions, the bill. We all know that there are inequities, that there are rents that don't support the housing, and there are rents that are too high. It is a very complex question. However——

Mr. KNOLLENBERG. Would you suggest that is an aberration, those reports that have occurred here, that we have got some documentation on, that that is unusual or somewhat unique?

Mr. CHURCHILL. In my experience I would assume that is the case. I don't know. I would have to see the specific cases.

But I do know that HUD, in an arrogance of administration, decided that instead of publishing regulations years ago, all they had to do was declare a fiat, and we will cut the rents without having regulations, and it has necessitated years of court fights over the issue before it got to the Supreme Court last year.

They still have not resolved that. It is a simple way to say, we will pass a bill and get Congress to take the heat for us not administering the program properly. They have the ability to do it, and then it addresses each individual situation.

Mr. KNOLLENBERG. I happen to think that the suggestion to renegotiate the expiring contracts is a good one, and I think that we should take a look at that from this perspective.

Regarding the lowering of the administration fee, Ms. Flanary, do you have any thoughts about that?

Ms. FLANARY. Yes, I would like to make one comment on the other issue, if I may. I really believe that the instances that you were describing are the exception rather than the rule. Bad press gets the most press.

I feel that any agency which is applying the rent reasonableness and doing the HQS inspections, I cannot speak for a particular agency or whatever article you may be looking at. I think there are tools in place that can prevent that. And I do agree that that is unconscionable if that is happening.

Mr. KNOLLENBERG. These are here if you want them, they are available.

Ms. FLANARY. As far as the administrative fee, it is now at, or Congress has mandated, an 8.2. As I stated in my testimony, there

are no agencies out there receiving 8.2, because of the blended rate that we are receiving. Vouchers are now set at 6.5 and certificates are at 7.65. We do support a study of actual cost before any changes in the administrative fee, procedures are done.

Many things, since OMB did their study, have changed in operating the programs, such as the portability requirements, the family self-sufficiency, the preferences, again, the lead-based paint. There are just numerous mandates that we are now under to ensure that the families are living in safe, decent, and sanitary conditions, and also that they are being treated fairly. And again, we would truly urge no change until there is a comprehensive study completed.

Mr. KNOLLENBERG. By whom?

Ms. FLANARY. We would certainly offer our services to be of assistance to you. I think it should be a joint effort by HUD, practitioners, and Congress.

Mr. KNOLLENBERG. Thank you.

Mr. SHULER. I would like to address this issue. You were trying to compare rents that are changing, that possibly HUD rents are higher than the current market. I think it gets back to the point we were talking about earlier of how you set the fair market rents.

California very frankly right now has decreasing rents. It is a soft market. The economic forces are in play. Reality changes by market area to area, and from time to time. If the process of setting section 8 fair market rents is able to keep up with the dynamics of the supply and demand, you are going to keep it in equilibrium. So I say, trade the process by which the market sets rents and don't make one comparison and say, here is an abuse, and there are inequities in how the formula is working.

Mr. KNOLLENBERG. Does any of the panel have a different view?

Mr. BRYSON. I think it is important to draw distinctions between tenant-based programs and the way FMRs are set and the project-based programs and the rent limits there. In the tenant-based programs, it is vital, particularly with the Voucher-type Program, to make sure that those limits are set high enough so that tenants will not pay more than 30 percent of the their income for rent.

When you switch over to the project-based ones, then there is a need for much closer scrutiny. The experience there over the past 12 years, and particularly the litigation that went to the Supreme Court, has shown that the owners weren't quite right when they thought they were entitled to the annual adjustment factor, and that there is a need really for HUD to be much more active in ensuring that the rents that they are getting are not above the market. But they have the law and they have the contract provision to do it already.

Mr. GRAZIANO. I would, too, make a distinction between a project based and a tenant based. I would point out that on project based, while there can be declining markets which would appear to put your project-based section 8 rents out of whack with the market, at least as to that base rent, you have to recall that those rents were established on a cost approach, not on a rent-comparability approach, and if you start cutting those rents, you are cutting into the basic cost of operating that building. In other words, the rent was based on projected initial operating cost plus the amortized costs of the debt service.

And so that is all factored into the initial calculation of that rent, and you really—if you say, well, there is a sudden decline in the market, these rents are over market, if you were to make a reduction in those rents, what would happen is that the owner would not be able to make his debt service, which would put the project into default, or you would have to seriously cut back on routine maintenance and extraordinary maintenance and there would be serious deterioration of the property. So I would very much caution against that.

As to whether annual adjustments are appropriate, I think everything that has been said is true. HUD has never done what it said would be done. And the suggestion of looking at renegotiation at the end of the term is a good one. But I think you have got to look at how those rents were initially established.

On the other side, on the tenant based, there are two issues. One is, are the fair market rents properly established overall for your market area; do they ensure market accessibility beyond areas of low income and minority concentration, which is what the intent is. You are supposed to have access to 45 percent of the market regionwide. That is a broad FMR issue.

But then there is the very issue which I assume some of your articles talk about, of whether rents are properly established for individual apartments, and that is where I would agree with Ms. Flanary that if the local authority is properly doing their reasonableness test, that should really not be a common thing.

You do have a problem, and I have observed this in markets that were declining, where you had set rents, reasonable rents initially with individual units and individual owners, and the market began to decline and the tenant is a long-term tenant, not project based but tenant based, and then you face a situation, you don't want to tell the owner, we are going to start cutting the rent, because that puts the tenant at risk of losing the apartment, but at that point some kind of freeze on an individual basis for that apartment, and in the tenant-based program that would be allowed, and that is not a contractual issue as it would be in the project-based programs. So I think you have to dissect this into its individual parts.

Mr. KNOLLENBERG. My time has more than run out. I appreciate the indulgence and appreciate the testimony of the panel. But there are some flaws, call them errors, that we have to adjust to, and I appreciate your testimony here this morning. We will see if we can't manage to approach those problems and arrive at some solutions.

Mr. Chairman, I am content. Thank you. I appreciate the time. I will yield back to you.

Chairman GONZALEZ. Thank you very much, sir.

Well, gentlemen, it is just about noon, and the remaining questions I have, I will submit them in writing to you, and not detain you unnecessarily.

[The information referred to can be found in the appendix.]

Again, I want to thank you very much. This has been most helpful. As I said before, it will be the first of a series of hearings, but your contribution is absolutely invaluable, and I choose those words very selectively.

One final thing. Mr. Edson, on longevity. Not too long ago, recently, a State senator from my county, commenting on a columnist who had said that I had kept a pretty active schedule even though I had reached the ripe age of 77, and he wrote them and said, I don't think that guy will ever die. So I sent him a note and said, well, friend, you have reason to worry, because the prognosis does look bad. My father lived to 91 and my mother to 93.

Mr. EDSON. If I might state for the record that the housing publication that referred to the last hurrah was not the *Housing Development Reporter*. Our style is not that breezy. And we know better.

Chairman GONZALEZ. I am sorry if there was any implication. It was a remark, and at that time we were still suffering the aftermath of the contested election for the chairmanship of the subcommittee.

So with that, I think we will close out, and repeat how grateful we are to you, and we will be in communication with you.

Also, I have asked unanimous consent, the other members, absent members, be permitted to submit questions in writing. They couldn't make it. They have had conflicts all over the place here today. And they may be submitting some questions. The only condition is that they do so by the time you receive the transcript of the proceedings this morning, so that then you can refer to their questions. If they do it promptly, fine.

[The information referred to can be found in the appendix.]

Chairman GONZALEZ. So thank you very much, and the subcommittee will stand adjourned until further call of the Chair.

[Whereupon, at 12 noon, the hearing was adjourned, subject to the call of the Chair.]

APPENDIX

November 3, 1993

Opening Statement
Chairman Henry B. Gonzalez
Hearing on Selected Section 8 Issues
November 3, 1993

Today we are here to examine several issues of critical importance to the operation of the Section 8 Housing Assistance Payments Program, one of the major housing assistance tools in law. Two of the issues, the merger of the section certificate and voucher program and contract rent adjustments, concern us immediately as they are addressed in the President's "Government Reform and Savings Act of 1993" just introduced in the House as H.R. 3400. For the remaining issues, fair market rents, administrative fees, and expiring contracts, this hearing represents only the first airing of these issues.

While I support the consolidation of the certificate and voucher programs -- after all such a merger was included in the House version of the Housing and Community Development Act of 1992 -- this merger may be better left up to the regular legislative process. I am concerned that this merger is actually a rewrite of the voucher program. I am concerned that the major policy of a 30% rent to income ratio for rent is compromised. The Congress has established the 30% rent standard as affordable for low income families; so I can not in good conscience condone a program which would permit up to 50% of the participants to pay up to 45% of their adjusted income for rent. I believe that places an inordinate cost burden on tenants. I will be interested in hearing the witnesses' perspective on this critical element of the merger.

I also will be interested in the witnesses comments about

the proposed freeze of contract rents for a year for section 8 new construction and substantial rehabilitation projects, some 850,000 units. Although I understand that the proposed freeze will provide budget savings in excess of $500 million, I fear that this proposal clearly presents legal and constitutional questions. HUD attorneys have even expressed their doubts about the legality of this approach to savings.

The remaining issues that we take up today we have discussed before in hearings and in other forums. I know that fair market rents and administrative fees have been the subject of much of the correspondence in my office this spring and summer and I suspect in many offices of members of this Subcommittee, as well. We must find practical and equitable approaches to reforms to the FMRs and fees. This hearing will frame the issues for our further deliberation, particularly for consideration of the federal response to the issue of expiring section 8 contracts. I am hopeful that the witnesses can provide us with options that we should consider for determining fair market rents and administrative fees and for preserving section 8 projects with contracts that start to expire in 1995 and 1996 through the year 2000. This inventory represents nearly 850,000 affordable housing units and it is our responsibility to determine an equitable and cost effective way to preserve as many of these units as possible, where owners wish to continue to own and operate this housing as affordable housing.

I look forward to the testimony of our witnesses.

Opening Statement of Congresswoman Maxine Waters
Subcommittee on Housing and Community Development
November 3, 1993

Mr. Chairman, I am pleased to participate in this hearing as we begin discussions on issues related to the Section 8 Housing Assistance Programs. These issues are timely and I commend you in your leadership in bringing these matters before the Committee.

Last week the President transmitted to Congress legislation aimed at making government more effective, efficient and responsive. The Administration's "Government Reform and Savings Act of 1993" includes a number of recommendations for reforming HUD. I am particularly interested in those recommendations that affect the operation and management of the Section 8 program.

Most housing advocates would agree that the Section 8 program is one of the most effective tools we have to

provide housing assistance to homeless and low income persons. It has been estimated that some 800,000 Americans are on waiting lists to receive Section 8 Certificates.

I agree that making government more efficient is a worthwhile goal and I applaud the Administration for the serious proposals they have offered. However, Mr. Chairman, I would just urge that we proceed with caution as we begin consideration of these proposals. We must remember to look beyond the data and see the lives of the people that will be affected by these changes.

As this subcommittee is charged with the responsibility of shaping our nations housing policy, I think it is very appropriate that we engage in these early discussions. I look forward to receiving the testimony of the witnesses and Mr. Chairman I look forward to my continued work on the subcommittee as we tackle the tough housing issues that face us. Thank you.

The Honorable Lucille Roybal-Allard

Statement

on

Section 8 Housing Assistance Program

Subcommittee on Housing and Community Development

November 3, 1993

Mr. Chairman,

Thank you for calling this hearing on the Department of Housing and Urban Development's Section 8 Housing Assistance Program.

It is a pleasure to be here, today, and a pleasure to be working with the distinguished Chairman.

I welcome our special guests and look forward to their testimony.

Mr. Chairman, as you know, I have the honor of representing the 33rd District of California. It is a district rich in cultural diversity, rich in its commitment to family and community, and rich in spirit.

The 33rd District is not, however, rich in material terms. The 33rd is one of the poorest Congressional districts in the country. Jobs are scarce, incomes are low, and all too many of the residents of the 33rd live on the edge.

Section 8 housing assistance makes a difference in the lives of many individuals in the 33rd District. For many, Section 8 is the first step up from homeless.

Housing this nation's poor and indigent population is a great and complex responsibility. It is also expensive. It is, however, a job that must be done.

I believe we can do that job and provide for the housing needs of this nation. I believe that Government can make a positive difference in the daily lives of individuals. The work of this committee over the years has proved that in the past.

I look forward to working with the Chairman and to working with members of this committee to maintain that commitment to providing for the housing needs of this nation.

Thank you.

Statement of Joe Knollenberg

Mr. Chairman, I welcome this hearing on the Section 8 Housing program. Recently, I have read a number of disturbing reports about the level of Fair Market Rents in certain communities. The taxpayers are clearly getting bilked by a system which somehow sets rents of $800, $900, or even $1,000 for units which could bring no more than $400 or $500 a month in the market.

Now this might be a small portion of the overall market, but it should be investigated further. What this tells me is what I have suspected for some time. Public housing has become an industry which has moved far beyond its original purpose. That original purpose was to temporarily house those people who were out on their luck. Over the years it has mushroomed into a giant dependency program with many entities feeding at the public troth.

I have tried to figure out a way to help those in public housing to get out. This is why I have put together legislation to reform public housing rent. The current system punishes tenants who want to work by forcing substantial rent increases on them when they increase their income.

This legislation would allow PHAs to set market and fixed rents for their tenants. One problem is that even though we encourage people to work and pay more taxes, the Congressional Budget Office tells us this proposal will require additional appropriations in the short run. In other words we have to come up with money.

Mr. Chairman, I propose we cut the excessive payments going to certain Section 8 landlords and use those funds to implement a rent reform program that will help the tenants get work and move on. Lets get back to the original purpose of public housing.

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STATEMENT
OF THE NATIONAL HOUSING LAW PROJECT
FOR THE HEARING HELD BY
THE SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
ON THE SECTION 8 PROGRAM

Wednesday, November 3, 1993, 10:00 A.M.
Room 2128 Rayburn HOB

David B. Bryson

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Statement of the National Housing Law Project

The National Housing Law Project is quite appreciative of this opportunity to present its views on the operation of the Section 8 program to the Subcommittee on Housing of the House Committee on Banking Finance and Urban Affairs. For twenty-five years the Project has served as a back-up center for attorneys around the country who represent low-income people on housing matters. It is from that experience and the experiences of their clients, the intended beneficiaries of the federal government's housing programs, that we derive the views that we present today.

Our focus is both on what have become to be known as the tenant-based and the project-based aspects of the Section 8 program. Those programs have been in existence for nearly 20 years. Those nearly twenty years of operation have revealed a number of ways in which they could be improved. They will be discussed in order below.

Before launching into an analysis of the way this program works, however, we cannot leave unsaid the most important point about these programs. That is that there is a desperate need for more federal housing assistance for the impoverished and working poor people who live in this country. The Department of Housing and Urban Development's own study of worst case housing needs shows that there are over 5 million families who are in dire need of housing assistance but cannot get it because of the inadequate allocation of housing assistance. Thus the most important step is to raise the level federal housing assistance so that more families are served.

There are a number of significant issues regarding the policies for the Section 8 program that the Congress should address. For the tenant-based program they include: (1) Allowing Payments Above 30% of Tenant's Income; (2) Metropolitan Wide Administration; (3) Counseling and Assistance in Finding Units; (4) FMR Exception rents; (5) Tolling and Search Time; (6) Tenant Protections; (7) Housing Quality Standards; (8) Portability; (9) Discrimination Against Certificate Holders; and (10) Special Allocations. For the project-based program they are: Tenant Selection by Project-Based Landlords and Private landlords' Not Renewing Their Contracts.

1. Allowing Payments Above 30% of Tenant's Income

The most significant statutory difference between the certificate and voucher programs is that tenants in the voucher program have to pay more than 30 percent of their incomes for rent if the landlord charges more than the payment standard. In

the certificate program, the landlords cannot charge more than the FMR limits and thus the tenants cannot be required to pay more than 30 percent.

When the voucher program payment standards are set inadequately low, tenants end up paying the price in the form of excessive rent burdens. Unfortunately the voucher legislation grants the PHAs control over the payment standard level and creates an incentive for them to keep the standards too low, so that they can spread the funds over more people, albeit at an inadequate level. When the subsidy levels are too low, a possibly unintended side effect is that the poorest voucher holders have much more difficulty participating in the program. That is because the excess above the payment standards charged by the landlords, which the tenants have to pay, more rapidly increases their rent burdens to levels such as 50% that neither they nor perspective landlords can or will tolerate.

Even if the payment standards are set at an adequate level, participating tenants still encounter excessive rent burdens when some landlords deliberately set their rents above the payment standards knowing that the tenants will pay the extra just to get a place to live.

These defects in the voucher system are even more obvious when one reviews them in the light of history. In the 1960's public housing was the major federal government program for providing housing assistance to people with low incomes. Yet the rents in public housing were set at fixed levels - intended to cover all operating costs - that did not vary with the tenant's income. As operating costs escalated, rents rose to levels that poor people could not afford. In response to this problem that some families were too poor for public housing, Congress enacted the Brooke amendment in 1969, limiting public housing tenants' rents to 25% of their adjusted incomes. That formula was raised to 30% - a 20% increase - in 1981 and the voucher program was authorized on a demonstration basis in 1983, allowing tenants' to pay even more than 30% of their incomes for rent. If the voucher system becomes the exclusive basis for calculating assistance payments under the tenant-based programs, we will have come full circle. Once again there will be families in this country who are too poor for federal housing assistance.

One unintended side effect of the certificate program's limiting the landlord's rent to the FMR level is that some certificate holders have difficulty finding landlords who will rent to them at the FMR level. If they cannot find a willing landlord, they end up turning their certificate back to the PHA. That is especially true when HUD has set the FMRs too low.

There is a need to resolve the policy conflicts between overburdening the family with excessive contributions toward

rent, as the voucher program does, and creating the pattern of families' turning in their certificates because landlords will not rent to them within the FMR rent limits. The Administration's consolidation proposal resolves this policy delimina the wrong way. It would convert to an across the board voucher system, instead of refining the certificate program in a fashion that would preserve tenant-based assistance as a viable housing program for poor people.

Any change designed to resolve this policy issue must contain three basic points. First, it must retain control of the FMR level in the hands of HUD, instead of giving the PHAs the option of setting them at a lower level. Statutory standards must be prescribed to ensure that HUD sets the FMR at an adequate level so that most participants will be able to rent homes at or below the FMR. Second, it must require the PHA to determine that the landlord is not charging an unreasonable rent, to guard against unscrupulous rent gouging. The PHA should also be directed to assist the tenant in negotiating with the landlord. Third, there must be safeguards to prevent the system from falling apart. Possibilities include a cap on the number of participants for whom the PHA can approve rents above the 30% standard and reporting requirements, with public disclosure, that will uncover malfunctions as they arise.

An amendment made by Section 543 of the 1990 Act, now codified as Section 8(C)(3)(B), in general resolves this policy issue in a fashion that is much better than the Administration's proposed switch to an across the board voucher approach. That section allows certificate holders to pay more than 30% of their incomes for rent, but only if:

(1) the landlord is charging more than the FMR limits for the unit,

(2) the family has chosen to pay the extra rent above the FMR limit,

(3) the PHA has determined that the rent for the unit is reasonable, and

(4) the PHA has determined that the rent for the family is reasonable, given its other expenses.

The PHA could not spend more than 10% of its incremental tenant-based assistance for families who paid more than 30% of their incomes for rent. If the PHA used more than 5% of its tenant-based assistance for such families, it would have been required to report the reasons for doing so to HUD, including any indication that inadequate FMR's were the cause of the problem. HUD would have been required to make the reports public and would have had to report to Congress each year on the situation and any

steps needed to correct the problems. Section 8(f)(2) as it would have been revised by the 1992 House bill included a similar provision.

HUD has not issued regulations implementing the 1990 amendment. The Administration's bill would repeal this provision of current law.

2. Metropolitan Wide Administration

For the nearly 20 years that the Section 8 tenant-based programs have been operational, they have been administered through essentially the same delivery system that was developed 40 years earlier for construction and leasing of public housing. Tenant-based rental assistance programs are functionally different from, and meet different housing needs, than housing construction and rehabilitation programs. Section 8 tenant-based rental assistance is a program designed primarily to respond to the problem of housing affordability, while promoting the economic and racial deconcentration of housing opportunities. Consequently, the need for Section 8 assistance is primarily based on the income of residents in a particular housing market area in relation to housing costs in that area. Yet the current criteria used to allocate Section 8 assistance only minimally reflect this central fact, both because of the statutory standards of 42 U.S.C. §1439, and HUD's manner of implementing the statute. Rather than being designed to enhance moving opportunities throughout a housing market area, the administration of Section 8 assistance through more than 4000 individual housing agencies creates a complicated and inefficient tangle of multiple applications and cross-billings, which wastes scarce funds on administrative overhead while frustrating those who are seeking Section 8 assistance and agencies administering the program. Revised Section 8 legislation should require a single administrative entity to manage the waiting list for each housing market area. Locally-based housing agencies should continue, however, to supervise the operation of the program for program participants in their local area.

3. Counseling and Assistance in Finding Units

The premise of the certificate and voucher programs has always been that the participating families would have more freedom to choose where they would live with tenant-based assistance as contrasted with project-based assistance. With that freedom, they would be able to live in neighborhoods that were less economically and racially concentrated and would have a greater selection of housing that is in decent condition.

In practice, certificate and voucher holders have moved to new neighborhoods much less than the program designers expected that they would. They often have had little choice

among landlords who would participate in the programs. In many situations they have had to live in substandard housing because the reluctance of PHAs to crackdown too sharply on the landlords for fear of driving them out of the programs. A large percentage of the certificate and voucher holders have not been able to use their tenant-based subsidies at all. There has not been as widespread movement of participants from neighborhoods that are racially and economically concentrated.

One effort to change this is the Moving to Opportunity program, based on the experience with the Gautreaux demonstration in Chicago. It combines tenant-based housing assistance with extensive landlord recruitment and counseling of participating families so that they have the option of moving to racially and economically integrated neighborhoods. It would be valuable to expand this effort considerably.

There is a need to add to the ordinary tenant-based programs a similar level of active involvement by the PHA even when there are goals in addition to expanding the participants, chances of living outside segregated neighborhoods. The difficulty some families have in using their subsidies can largely be overcome if the PHA becomes more actively involved in recruiting landlords and assisting tenants in finding them.

4. FMR Exception rents

Any effort to make the tenant-based program increase participants housing opportunities requires some exception rent system. Exception rents are exceptions either to the voucher payment standard or to the certificate fair market rents that allow for increased subsidies to pay for the cost of more expensive housing. That more expensive housing may be housing located in a predominantly or exclusively white, middle or higher income neighborhood. It might be housing with additional amenities that make it serve people with disabilities more effectively.

Whatever the reason for the higher cost - as long as it is not merely the landlord's desire for excessive profit - it is extremely important to have a way to increase the subsidy to cover the cost. Otherwise, the participating tenants will have to pay the extra cost from their own pockets or will be barred from renting that housing altogether. When that occurs, as it does now under the voucher program, and to a lesser extent under the certificate program, program goals of expanding housing opportunities and promoting fair housing go largely unreached.

5. Tolling and Search Time

A related problem with the certificate program is that families, especially people of color, large families and those

with the lowest incomes have great trouble finding landlords to rent to them. Under HUD's regulations they can have as little as 60 days to find a willing landlord. Under the voucher program, even when they find a landlord and submit a lease for the PHA to approve, the time the PHA spends processing that request for approval, including the time to schedule and make an inspection of the apartment, counts against the sixty days. In cases where the apartment is rejected, the family will have even fewer actual search days than sixty. The regulations do allow the PHA to extend the search time to a maximum of 120 days, but they leave the PHA with absolute discretion not to do so.

The consequences of these rules is lessen the opportunities of people of color, people with disabilities, large families and the lowest income people to participate in the program. In many cases they end up returning their certificates or vouchers to the PHA. Even if they do find a place to live, the time pressures force them to take lesser quality housing, often times housing that violates the housing quality standards but is approved by the PHAs because they know nothing else is available. They are also discouraged from searching for housing outside the neighborhoods that are racially or economically concentrated, because such searches take much more time.

To overcome these problems, the tenant-based programs need to be redesigned the give the participating families more time to search for a place to live. In addition, a uniform rule is needed to ensure that the running of any time period is tolled while the PHA decides whether to approve a unit and a lease.

6. Tenant Protections

The current section 8 statute has an important protection for tenants that the Administration's bill would not include. That is the requirement that tenants not be evicted unless they have seriously or repeatedly breached their lease or for other good cause. Section 8(d)(1)(B). That provision was added by the Congress in 1981 to bring the Section 8 certificate program into conformity with all the other federal housing programs. It serves to protect tenants against retaliatory and other arbitrary evictions from their home. For many tenants, it is an important safeguard against them becoming homeless, which in many tight housing markets is most often what happens when a family is evicted. For those reasons, that statutory provision should be included in any revision of the certificate and voucher programs.

The current law contains another provision on evictions that the Administration's bill would not include. That is the requirement that landlords who intend to evict a tenant send them a notice specifying the grounds for eviction. Section 8(d)(1)(B)(iv). The 1992 House bill would have improved that section in two respects. See Section 8(h)(6). First, it would

have extended from the tenant-based program to the project-based program the statutory requirement that eviction notices specify the grounds for eviction. Second, it would have guaranteed tenants 30 days notice of the tenancy termination, except in nonpayment of rent cases, when the notice period would have been 14 days. That change would have brought the Section 8 eviction notice provisions into conformity with the statutory requirements for public housing. Both those changes are desirable.

Under the Constitution tenants whose assistance is being terminated and applicants who are rejected are entitled to be heard on their side of the case. After much litigation HUD finally recognized this longstanding principle of constitutional law. Unfortunately, too often in practice the hearings prescribed by HUD's regulations are merely exercises in which the initial PHA decisions are just rubber-stamped by hearing officers who are not impartial. HUD needs to be instructed to make sure that the PHAs' hearing procedures are truly an opportunity for the tenant to be heard by an impartial decision-maker.

7. Housing Quality Standards

One of the major problems with the voucher and certificate programs concerns enforcement of the housing quality standards. Ensuring that participating landlords maintain their units in decent condition is vital to the success of the program. Otherwise, HUD's housing assistance programs will just provide the landlords more rental income without providing the tenants decent places to live.

There are, however, circumstances where PHAs' practices regarding enforcement of the housing quality standards merely result in the tenants losing their subsidies instead of securing decent housing. If the PHA too rapidly terminates the landlord's HAP contract when housing quality standard violations are found, the tenant has no option but to get a new certificate or voucher and try to find a new place to live. In many tight housing markets, it is not possible to find another place and the tenant ends up turning in the certificate or voucher and having no subsidy and no housing.

In these circumstances it is important to ensure that:

(1) all steps are explored to get the landlord to make the repairs;

(2) alternative means of securing the repairs are made available, such as authorizing the tenants or PHAs to have the work done;

(3) the tenants are fully informed of the actions that are being taken and of their options and responsibilities; and

(4) the tenants are ensured adequate time and resources, if they eventually have to move.

The 1992 House bill had provisions on this point that should be included in any new legislation. See Section 8(h)(7). The administration's bill does not include any change regarding Housing Quality Standards.

8. Portability

The 1992 Housing Act included a provision limiting the portability rights of voucher and certificate holders who secure assistance from a PHA in whose jurisdiction they did not live at the time they applied for the assistance. 42 U.S.C.A. § 1437f(r)(1), as amended by Section 147 of the 1992 Act. In effect, such families were required to find a place to live within the jurisdiction of the issuing PHA for 12 months before being allowed to exercise their portability rights.

The 1992 House bill had a similar provision, but it differed from the enacted legislation in two important respects:

1. First, it allowed the PHA the option of not imposing the 12 month residency restriction, instead of requiring the PHA to do so; and

2. Second, it required PHAs with programs serving more than 300 families to provide exceptions for at least 10% of the families.

Section 147 of the 1992 act has created sufficient controversy and unintended results to require revision in any future legislation. At a minimum it should be made optional with the PHA, not mandatory. In addition, waivers should be built in for families that can not find housing in the issuing jurisdiction despite good faith efforts to do so or who have good cause to reside in another jurisdiction.

9. Discrimination Against Certificate Holders

One of the reasons that the tenant-based programs have been less successful than they should be is that a large number of landlords refuse to rent to certificate or voucher holders. The United States Housing Act currently prohibits most landlords who participate in the Section 8 program from refusing to rent to certificate or voucher holders. 42 U.S.C.A. § 1437f(t) (West Supp. 1993).

It would be even more desirable if this prohibition on discrimination against tenant-based assistance holders were extended beyond landlords already participating in the Section 8 program. Congress has done that in a piece meal fashion for

certain other categories of landlords. For example, landlords who acquire projects from HUD under its multifamily property disposition program cannot refuse to accept certificates. 12 U.S.C.A. § 1701z-12 (West 1989). Rent Supplement, Section 202, Section 236 and Section 221(d)(3) BMIR landlords are barred from discriminating against certificate or voucher holders. Pub. L. No. 100-242, Section 183, 101 Stat. 1872 (1987). Tax Credit landlords were added to the list in this year's tax bill. 42 U.S.C.A. § 42(h)(6)(B)(iv), added by Section 13142(b)(4) of Pub. L. No. 103-66, 107 Stat. 438 (1993).

One of the problems with the current law on this point is that it sometimes discourages landlords from entering into the tenant-based assistance programs in the first place, because of fears that doing so will make them subject to this obligation not to discriminate against assisted tenants when renting other apartments. The best way to avoid this unintended side-effect is to extend the prohibition on discrimination against tenant-based assistance holders as widely as possible. Then it would not be the very act of renting to the first assisted applicant that triggers the landlord's duty not to discriminate. At a minimum, the prohibitions against discrimination should be extended to all landlords participating in any federal, state or local housing program, including the direct loan and mortgage insurance programs. An even better step would be to apply the prohibition across the board to all landlords.

10. Special Allocations

As we said above, there is a desperate need for housing assistance in this country and every effort must be made to ensure that our housing programs reach everyone who needs help. Until that goal is reached it is important to recognize that some categories of people have extraordinary needs that should be met first. Congress has done that, for example, by creating the family unification program under which Section 8 is provided to families whose children are about to be or have been placed in foster care because the family cannot secure adequate housing. Programs like that, which meet to extraordinarily compelling needs of families in special situations, should be continued.

11. Tenant Selection by Project-Based Landlords

A significant problem with the project-based programs, such as Section 8 new construction, is that they serve people with the lowest incomes and especially people of color to a much lesser extent than other HUD programs, such as public housing and certificates and vouchers. One reason for that is that neither the statutes nor the HUD regulations establish effective tenant selection criteria and procedures to guard against arbitrary practices of some of those landlords. As a result applicants with the lowest incomes and, especially, people of color, are

much less likely to be accepted than applicants with higher incomes who are white.

Section 8(h)(2)(D), as it would have been revised by the 1992 House bill, would have required project-based landlords' tenant selection criteria to be reasonably related to the applicant's ability to comply with the lease. That section would also have required the owner's to give a rejected applicant an opportunity to rectify erroneous rejections. Provisions along those lines should be included in any new revision of the program.

12. Non-Renewal of Section 8 Contracts

In the various versions of the project-based Section 8 programs, e.g., new construction, loan management set-aside, and substantial rehabilitation, the contracts are written to give the owners the option of not renewing their contracts at five year intervals. In addition, the appropriations for many of those project-based programs were made for fixed periods ranging from five to 15 to 20 and in limited circumstance longer periods. Many of the shorter term appropriations have already expired and the longer term ones expire in the near future as the early Section 8 projects reach their 20th anniversary.

What is needed here is a three-faceted policy. First, Congress must be very diligent about appropriating funds to ensure that the contract extensions will be possible when the appropriations expire. Second, HUD must be directed to offer extensions of contracts as they expire, either at the time that renewal becomes optional or at the end of all the optional renewal periods. Third, the owners should be required to renew their contracts when they expire, either at the end of a renewal period or at the end of all the renewal options, as long as HUD offers an extension with Section 8 subsidies.

So far Congress has appropriated the required renewal funds, but as the budget pressures rise, the need for diligence rises also. With regard to HUD's obligations to offer extensions, Congress has not yet not included language mandating HUD to offer contract extensions, but it should do so. On the owner's duties to renew, Congress has taken only half a step. It has required the owners to notify HUD and the tenants if they plan not to exercise their option not to renew the contract and required HUD to offer rent increases as an inducement to the owners to stay in the program. In tight market, such limited inducements are not enough to ensure that the owners will stay in the program and that the tenants are not displaced into an unsubsidized market in which they cannot secure a place to live.

We thank you for the opportunity to present this statement and we hope that it will be helpful in your deliberations.

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National Association of Housing and Redevelopment Officials
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Statement

of

Alyce Flanary

on behalf of

The National Association of Housing and Redevelopment Officials

before the

Subcommittee on Housing and Community Development

US House of Representatives

on

Legislative Proposals
of the
US Department of Housing and Urban Development
regarding the

Section 8 Rental Assistance Program

November 3, 1993

The National Association of Housing and Redevelopment Officials is a 60 year old professional membership association of housing and community development officials throughout the United States who administer HUD programs at the local level. Its membership, numbering 9000, has long participated in the creation and fine-tuning of national housing policy and programs.

Thank you, Mr Chairman. My name is Alyce Flanary and I am here on behalf of the National Association of Housing and Redevelopment Officials. I am the NAHRO Vice President for Housing and, in that capacity, chair a committee of 38 executive directors of housing agencies across the country. For two years, I chaired a NAHRO Section 8 Working Group of more than 30 agency administrators who administer the Section 8 program in cities, towns, counties, and rural areas throughout the United States.

In my home state of Texas, I am the Director of Housing for the Central Texas Council of Governments in Belton, where more than 2200 families and seniors can afford the rent thanks to Section 8 certificates, vouchers and Moderate Rehabilitation contracts which my agency administers. My agency administers the Section 8 program in seven counties covering 6,558 square miles and 343,000 people. These counties are both urban and rural.

We appreciate the opportunity to comment on several issues relating to the Section 8 Rental Assistance Program of critical importance to the more than three million families and seniors assisted by the program; the more than 3300 public and Indian housing agencies (LHAs) which administer the program; and the thousands of private landlords in whose apartment buildings those low income Americans reside.

As you may recall, the original House version of The Housing and Community Development Act of 1992 combined many features of the certificate and voucher programs into a merged Section 8 program. The merged program was dropped from the bill without explanation when it came before the full House.

The HUD Section 8 Merger Proposal

We believe a merged Section 8 program should, once again, be incorporated in a two year reauthorization of HUD programs.

HUD has also recognized the importance of a combined Section 8 program. We are delighted to see the Vice President's "National Performance Review" recommend a merger of Section 8 certificates and vouchers to achieve savings. We offer several fine-tunings to that proposal:

1. Eligible Families

Families eligible for rent assistance should have incomes at or below 80 percent of the area median income, as current law states. HR 3400 would restrict project-based assistance to those with less than 50 percent of area median. This would limit local flexibility to house eligible tenants, including the disabled, who may have incomes between 50 and 80 percent of income.

2. Federal Preferences

We believe that 50 percent of the new admissions to public housing and project-based Section 8 should be exempt from federal preferences. This will help stabilize these buildings and projects and avoids concentrating the poorest of the poor, many with multiple family problems, and in need of intensive supportive services.

HR 3400 would change current law preference exception of 30 percent for Section 8 project-based tenants to ten percent. HUD is just now implementing this preference exception. We believe it should be allowed to work and not reversed summarily by this legislation.

3. Rent Standard

We believe housing authorities should have the option to set the rent standard for Section 8 landlords based on their local housing market. This option should be in addition to HUD-determined Fair Market Rents. Such a local option, we believe, can more closely track local housing markets and avoid the prolonged disputes, as is currently the case, between more than 1000 local housing authorities and the Department over the setting of Fair Market Rents by HUD. HR 3400 permits local agencies to set the rent standard.

4. Annual rent adjustments

Annual adjustments to the rent paid to landlords should be calculated by HUD, or the PHA, depending on which body developed the rent standard in the first place. HR 3400 is silent on this point.

5. Shopping Incentive

HR 3400 does not permit a shopping incentive. We think it should.

The shopping incentive permits Section 8 assistance holders to pay more than 30 percent of their income for rent in order to live in a better building in a better neighborhood than the Fair Market Rents permit. It enables them to decide for themselves whether they wish to pay more or less than 30 percent of their income for rent. They know up front the amount of Section 8 subsidy they will receive toward rent.

The local agency should determine whether a shopping incentive for Section 8 holders should be used. If the PHA permits the shopping incentive, the number of families permitted to use it should not be limited.

We suggest a cap of 50 percent of income on the amount that tenants would

be permitted to pay for rent to live in less impacted areas in buildings with more amenities and neighborhood services. Because the FMR is set at the 45th percentile of all rents in the locality, the tenant's choice of where they may live within the locality is limited to those parts of town where the rents are low. The Fair Market Rent essentially excludes 55 percent of the units in a given jurisdiction because they are priced beyond the reach of Section 8 tenants. Without a shopping incentive, Section 8 tenants will not have the flexibility to choose where they want to live.

The PHA should apply a "rent reasonableness" test for those residents wishing to pay more than 30 percent of their income for rent. HR 3400 permits this.

6. Project-basing

This technique permits PHAs to assign Section 8 assistance to a building for the term of the contract, usually five years, rather than assign it to the tenant. This technique ensures that some percentage of the local rental market will remain affordable to low income families, through Section 8 rental assistance, for at least five years.

NAHRO believes local housing authorities should be authorized to "project base" up to 15 percent of their total Section 8 allocation. HR 3400 permits this.

7. Portability

Current law requires that Section 8 recipients, who do not live in the jurisdiction, must reside in the issuing jurisdiction for one year after first receiving the Section 8 assistance. The purpose of this provision is to reduce the loss of Section 8 assistance from one locality to another and to reduce "waiting list shopping" by some prospective Section 8 tenants.

What current law and HR 3400 don't do, however, is compensate housing agencies for the growing paperwork and administrative costs of billing other housing authorities for the cost of Section 8 rental assistance for tenants who have moved into their jurisdiction. Nor does current law make whole those PHAs experiencing a substantial net outflow of Section 8 "portable" tenants who take their HUD assistance with them.

NAHRO urges this Committee to rectify this situation by mandating a HUD headquarters reserve of Section 8 rental assistance of five percent (5%) of the total Section 8 incremental assistance account.

LHAs receiving portable Section 8 tenants should absorb the cost of their rental assistance up to five percent (5%) of the LHA's total Section 8 allocation or 25 percent of total Section 8 turnover, whichever is less, before being "made whole"

from the HUD headquarters reserve.

8. Vacancies

We suggest vacancy and damage payments should be permitted at the discretion of the LHA. This would provide compensation to Section 8 landlords for sudden tenant move-outs and apartment damage beyond the security deposit. HR 3400 provides a vacancy payment only for the month after the tenant moved out, and is silent on damage payments. This flexibility is essential to retain landlords in the program.

9. Allocation System

HUD should be directed to allocate Section 8 rental assistance in dollars, rather than units. This enables the locality to translate those dollars into bedroom sizes, based on local need. HR 3400 is silent on this point.

10. Rulemaking Deadline

Finally, we urge the Subcommittee to set a time certain for the Department to write regulations to implement the merged program. HR 3400 is leaves rulemaking and a deadline entirely up to HUD.

We believe a merged program, such as I have described, would significantly simplify this program and reduce the confusion and paperwork costs for all parties concerned: tenants; landlords; local housing agencies; and HUD. And we hope it will enable the Department to better account for the number of families and seniors assisted; the number of landlords and housing authorities involved in the program; the number, term, and dollar amounts of contracts outstanding; and to forecast Section 8 contract renewal costs with much greater accuracy.

Setting Fair Market Rents

Part and parcel of this major HUD program which makes rental housing affordable for so many Americans, is the calculation of Fair Market Rents by HUD. As you know, the re-benchmarking of FMRs earlier this year based on the 1990 Census threw thousands of housing authorities, Section 8 tenants, and landlords into a tizzy. That was because more than 2700 of the 3400 housing markets for which HUD calculates Section 8 Fair Market Rents were benchmarked at lower rents than had previously prevailed.

A long and loud protest erupted throughout the country, questioning HUD's data and its methodology for determining rents. HUD received more than 2500 letters appealing the proposed rents for localities. More than one thousand local housing

agencies appealed their proposed FMRs to HUD and embarked on elaborate market studies of their own to demonstrate to HUD the error of its proposed Fair Market Rents.

The biggest concern was that affordable housing opportunities for low income families would be severely curtailed. NAHRO agencies were concerned that the proposed rents were so low that landlords would drop out of the program and those that remained would only have properties in impacted pockets of poverty. The effect on tenants would be devastating.

To its credit, HUD extended the deadline for appeals of FMRs and permitted methods other than the Random Digit Dialing which it had used to establish the proposed FMRs. The Department has made final decisions on FMRs for all agencies that submitted appeals before August 30. And it expects to complete its decisions of all other appeals before the end of the year.

We strongly believe the Random Digit Dialing procedure must be modified to determine more accurate rent levels in local market areas. This is because the current procedure appears not to distinguish between rents for HUD-assisted housing and private market rents. Without this distinction, the Department is unable to accurately estimate what it would cost a family to find a decent apartment at a reasonable rent on the private market -- the standard upon which Fair Market Rents are supposed to be based. By including HUD-assisted tenants in the current RDD system, the reported rent paid is significantly below what the actual private market rental rate is.

Alternative methodologies to determine rents in a much more broad range of markets must be permitted. The methods should be locally developed and statistically validated. Random Digit Dialing is used for metropolitan areas and large regions. It was not used for smaller nonmetropolitan areas. The American Housing Survey is performed annually for only eleven metropolitan areas. AHS data is available for only 44 metro areas.

The Section 8 Administrative Fee

This fee, set by law at 8.2 percent of the two-bedroom Fair Market Rent, is supposed to cover the costs to PHAs of administering the Section 8 program.

We believe the Section 8 Administrative Fee should remain at the 8.2 percent authorized level. As you know, no LHA actually receives the full 8.2 percent fee because HUD budget requests and annual appropriations have consistently been less than the full amount.

NAHRO urges this Committee to hold harmless at the 1993 administrative fee payment level all agencies which would have had a reduced fee because of reduced

FMRs while permitting those agencies with increased FMRs to calculate their Administrative Fee based on the new FMR. We ask that this hold harmless be instituted until Congress enacts an alternative method of compensating PHAs for the costs of administering the Section 8 Rental Assistance Program.

We understand that HUD is not sure when it will complete its study on "de-coupling" the Administrative Fee from Fair Market Rents. This is a large and complex issue --- how to fairly compensate local agencies for the cost of administering the Section 8 rental assistance program and the growing number of unfunded federal mandates. We believe a thorough analysis of the costs associated with the program and alternative indexes or procedures for setting the fee must occur before the Congress sets a new Fee and/or procedure in stone.

HR 2517, signed into law October 27, holds harmless for FY 1994 those agencies with reduced FMRs from a reduction in their fee while permitting up to a 3.5 percent increase in the fee for those with increased FMRs. We suggest this same hold harmless provision be continued to permit all parties the necessary time to thoroughly examine this issue and make recommendations to this Committee.

The cost of administering the Section 8 program is significant and continues to grow as new federal mandates are imposed without the funding to implement those mandates. For example, the Family Self Sufficiency program, which NAHRO embraces whole-heartedly, has been mandated for all incremental public and Section 8 rental assistance since 1990. Yet, it is only just this year that HUD included in its budget request and Congress appropriated limited funding for Service Coordinators and part of the costs of supportive services for resident families.

Portability of Section 8 families, which permits them to relocate from one jurisdiction to another and take their Section 8 rental assistance with them is a growing bookkeeping and accounting headache for hundreds of local housing agencies. And it results in some localities losing some of their Section 8 assistance, while others gain.

Federal preferences for admission to Section 8 housing must be determined for each family and senior applying for the program. And lead-based paint testing and abatement requirements of landlords must first be explained to them by their local housing authority and they must then be monitored for compliance with the law by those same agencies. Failure to comply could result in reduction or loss of their Section 8 contract.

Local agencies have to absorb the cost of these unfunded mandates. And the principal way they do so is by relying on their Section 8 Administrative Fee.

Other LHA costs which are reimbursed by the 8.2 percent Section 8

Administrative Fee are annual recertifications of tenant incomes; annual and interim Housing Quality Standard inspections of apartments and homes rented to Section 8 tenants; community outreach to interest landlords in accepting Section 8 tenants; financial monitoring; and audits.

Other HUD Tools in the Arsenal

The Section 8 program, as you know, Mr Chairman, came under assault during the 1980's. Budget priorities shifted and the program gradually was transformed into a family assistance program through short-term, five-year rental vouchers.

While vouchers have worked well in many communities, including some communities with soft housing markets where the supply of available housing exceeds demand, it doesn't do as well in tight housing markets where demand drives rents through the roof. Low income people simply cannot compete for apartments renting for more than $1000 per month in cities like New York, San Francisco, Boston, Chicago, Los Angeles, and other high-cost markets.

That is why other HUD programs which add to the supply of affordable housing, like the Public Housing Development/Acquisition program are so important. They are essential components of the mix of programs available to meet the market needs of diverse American communities. You have long championed the Public Housing Development program, Mr. Chairman, and we are grateful for your support of it. We urge you and your Subcommittee colleagues not to lose sight of this important complimentary program as you begin to craft the Housing and Community Development Act of 1994.

We commend you, Mr Chairman, for holding this hearing now to look into these all-important matters in anticipation of a major two-year reauthorization bill next year. Thank you for the opportunity to be here.

QUESTIONS FOR MS. FLANARY FROM CHAIRMAN GONZALEZ

1. Has your agency done an alternate housing market survey to determine the validity of HUD proposed Fair Market Rents?

   If so, please describe how you conduct that survey.

2. How much does that local market survey cost your agency?

   How much does the HUD Random Digit Dialing survey cost your agency?

3. How many families and seniors are on the Section 8 waiting lists in your seven county area?

   How long, on average, must they wait for Section 8 assistance?

4. Is there more than one set of Fair Market Rents for your seven county area?

5. What kind of confusion currently exists among prospective tenants and landlords concerning the Section 8 certificate and voucher program?

   What forms or program requirements are different from one program to the other?

(MS. FLANARY'S RESPONSES)

QUESTIONS FOR MS. FLANARY FROM CHAIRMAN GONZALEZ

1. Has your agency done an alternate housing market survey to determine the validity of HUD proposed Fair Market Rents?

   Yes. Our agency conducted a housing market survey in the five non-metro counties using staff resources. Local property owners, management companies and realtors were contacted and information was compiled regarding tenant paid utilities, age, type and size of unit, monthly rent, occupancy and whether unit is open market or federally assisted.

2. How much does that local market survey cost your agency?

   Approximately $1,500 in man hours per county (5 counties)

   How much does the HUD Random Digit Dialing survey cost your agency?

   Approximately $15,000 (2 counties)

3. How many families and seniors are on the Section 8 waiting lists in your seven county area?

   Approximately 500

   How long, on average, must they wait for Section 8 assistance?

   Eight to twelve months ago the average wait for assistance was between two and three years. Applicants are being issued certificates and vouchers within six to twelve months at this time, however due to the reduced (1992 reduction) FMR's set by HUD the families are not able to find units and many times their certificate or voucher will expire causing the families to move in with friends or relatives or finding themselves homeless. Most times the families re-apply for assistance.

4. Is there more than one set of Fair Market Rents for your seven county area?

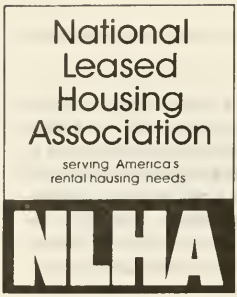
   Yes. Six (6) (Two Counties are in an MSA, each of the other 5 counties have different proposed FMR's)

5. What kind of confusion currently exists among prospective tenants and landlords concerning the Section 8 certificate and voucher program?

The voucher program participants are allowed to rent a unit, if it meets HQS and is rent reasonable, which exceeds the FMR set by HUD. This causes not only confusion among tenants and landlords but a sense of unfairness. Property owners/managers set a rent at what the market will bear. To allow assistance for a voucher holder and ask for the rent to be reduced for a certificate holder is inconsistent and most times prohibits eligible families from locating a suitable housing unit. Additional confusion is created by the method of computing HAP assistance. For example, a family is issued a 3 BR certificate. The family may rent a 2 BR (which conforms with occupancy standards) only if the rent falls within the 2 BR FMR and the HAP is calculated on the actual rent less the tenant share. A family issued a 3 BR voucher may rent a 2 BR unit and gains the benefit of the HAP being calculated using the 3 BR Payment Standard (FMR).

What forms or program requirements are different from one program to the other?

Payment Standards must be adopted for the voucher program whereas FMR's are used for the certificate program. Contracts, dwelling leases, certifications of eligibility, computation forms and portability requirements are all different for each of the programs.



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TESTIMONY OF NEIL CHURCHILL

PRESIDENT, NATIONAL LEASED HOUSING ASSOCIATION
ACCOMPANIED BY CHARLES L. EDSON, COUNSEL

BEFORE THE HOUSING AND COMMUNITY DEVELOPMENT SUBCOMMITTEE
HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Wednesday, November 3, 1993

National Leased Housing Association
serving America's rental housing needs
NLHA

2300 M STREET, N.W. / SUITE 260 / WASHINGTON, D.C. 20037 / (202) 785-8888

TESTIMONY OF NEIL CHURCHILL

PRESIDENT, NATIONAL LEASED HOUSING ASSOCIATION

BEFORE THE HOUSING AND COMMUNITY DEVELOPMENT SUBCOMMITTEE HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Wednesday, November 3, 1993

My name is Neil Churchill. I am Vice President of the National Capital Corporation and president of the National Leased Housing Association, on whose behalf I testify today. I am accompanied by Charles L. Edson of the law firm of Peabody & Brown, counsel to our Association.

As our testimony will involve some extensive legal analysis of the Administration's proposals, I ask leave from the chair for Mr. Edson to participate in the presentation of our testimony.

By way of background, the National Leased Housing Association for over twenty years has represented the interests of developers, owners, financiers, public housing authorities, state housing agencies, and others involved in the Section 8 program. We are a unique organization in that in our early years our only concern was the Section 8 program. For that reason, we estimate that our members probably participated in the majority of projects developed under the new construction and substantial rehabilitation program. Mr. Edson will first address the Administration's proposal to eliminate the Annual Adjustment Factor for the next fiscal year for these projects. I will then address the proposal to merge the voucher and certificate programs as well as the issues of administrative fees and the formulation of the Fair Market Rents (FMRs).

The Section 8 Rent Increase Denial

The issue immediately before the committee is the Administration's proposal to eliminate the Annual Adjustment Factor Rent Increase for the next fiscal year for Section 8 new

construction and substantial rehabilitation projects as part of the Government Reform and Savings Act of 1993.

What this proposed statutory amendment ignores is the crucial fact that an owner derives its right to such rent increase from its contract with the government and not from the statute.

The Housing Assistance Payment Contract, entered into by the owner and HUD, provides for this automatic adjustment in rents. A typical contract provision is as follows:

> Section 2.8 Rent Adjustments
> a. Funding of Adjustments Housing maximum payments will be made in increased amounts commensurate with Contract Rent Adjustments under this Section, up to the maximum amount authorized under Section 1.5(a) of this Contract.
>
> b. Automatic Annual Adjustments
> 1. Automatic Annual Adjustment factors will be determined by the Government at least annually; . . . Such Factors and the basis for their determination will be published in the Federal Register; . . .
> 2. On each anniversary date of the contract, the Contract Rent shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government; Contract Rents may be adjusted upward or downward as may be appropriate; . . (emphasis added)

The contract is unambiguous. Owners have the right to have their rents raised by the Automatic Annual Adjustment Factor. The current factors range from 3 to 3.5 percent so that virtually all owners, pursuant to this contractual clause, would be entitled to some rent increase in 1994 but for the Adminstration's proposal.

Accordingly, HUD's obligation to pay the annual increase is more than a matter of statute and regulation - it is a matter of contract between the owner and HUD. There is an established principal in law that the government cannot abrogate its contractual obligations and this is especially true when its purpose is to save money. In the mid-1930s, the government attempted to save money by abrogating its obligation under certain war-risk insurance policies. The Supreme Court in Lynch v. United States, 292 U.S. 571 (1934), struck down that provision, stating:

> "valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment."

The Supreme Court reached this same conclusion in Perry v. United States, 294 U.S. 330 (1935), when the government attempted to abandon the gold standard.

Indeed, in examining the rationale for this reduction of payments, the administration baldly states that the purpose of the proposal is "to generate budget authority and outlay savings." The law is clear; the government cannot renege on its contracts for this purpose.

Clearly, the source of this proposal was oblivious to this contractual requirement, ignoring the preamble to the regulations, published each year with the new Annual Adjustment Factors, stating:

> The United States Housing Act of 1937 (1937 Act) requires that the Assistance Contracts signed by the Department's Section 8 Housing Assistance Payments programs provide for an annual or more frequent adjustments in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula (emphasis added).

We cannot believe that the committed and knowledgeable people now in charge of the housing programs at HUD could have ignored this basic contractual requirement of which they must be aware. We can only conclude that the recommendation came from some other part of the federal government.

Leaving the legalities aside, it is extremely bad policy for the government to abrogate its contracts with owners who have entered into them in good faith. As this committee is well aware, over the past few years, the owners' confidence in their contractual agreement with the government have been shaken by HUD's delay in implementing the Low Income Preservation and Resident Homeownership Act of 1990 (LIHPRHA) and certain retroactive changes in the tax law affecting low income ownership. If this provision is adopted, owners would certainly feel justified in believing that the government cannot be trusted in any of its contractual commitments.

The Long-Term Implications

The HUD proposal comes at a most unfortunate time, as the entire housing community - owners, tenants, and public bodies alike focus on the extension of expiring contracts under the New Construction and Substantial Rehabilitation Program. The National Leased Housing Association has begun to study this question in earnest, as many 20-year Housing Assistance Payment Contracts under

the New Construction and Substantial Rehabilitation program will expire in the mid to late 1990s. Accordingly, Congress must address this issue in the next year or two before the first of the contracts expire.

At this time, we cannot recommend a permanent solution, as our 80-member task force is still considering alternatives. In this regard, I commend the Committee for beginning to focus on this question, which will shape the future of subsidized housing in the next millennium.

From our early discussion, it is clear that the vast majority of the owners would want to continue to keep the project low-income if equitable contractual arrangements as to term and rate can be worked out with the government. We believe that such a voluntary approach would be far more preferable, both as a matter of law and policy, to a possible approach that would mandate continued ownership.

However, essential to a voluntary approach is that there be mutual trust. This trust is impossible if the government can be free to pick and choose when, where, and how it chooses to honor its contractual commitments.

Section 6401 of the Administration's proposed bill, if enacted, would go very far in destroying this necessary ingredient of trust, with disastrous consequences to the preservation of the badly needed Section 8 housing stock in the long run.

Merger of the Certificate and Voucher Program

NLHA has long advocated a merger of the certificate and voucher programs and is pleased to see the Administration forward a proposal to accomplish such a consolidation. Because it has been only two days since we received the language on the merger, we have been unable to adequately consult with our PHA members, and therefore can only offer general comments at this time. We fully intend to submit a detailed analysis of the proposal to this Committee within the next few weeks and look forward to working with Congress and Department to fashion a merged program that consolidates the best features of the certificate and voucher programs.

The Administration's proposal for the "certificate" program looks a lot like the current voucher program in that tenants would in some cases pay more than 30 percent of their adjusted income for rent. It is somewhat reassuring that the merged program would contain a cap of 45 percent on the amount of income a family can pay for rent as well as a mandatory rent reasonableness test; especially as families have paid up to 60 or 70 percent of income for rent under the current voucher program. However, we recognize

that any rent burden over 30 percent of income may not be affordable for low-income families.

We applaud the fact that the "shopping incentive" will not be a component of the merged program. NLHA has always maintained that the cost of the shopping incentive outweighed any benefit, particularly since most families who utilized it did not "shop" at all, but remained in the apartment that they resided in before receiving the voucher and received a benefit of a rent that may be as low as ten percent of gross income.

The ability of a PHA to attach up to 15 percent of its tenant-based assistance to a project is also a provision which NLHA supports. Furthermore, we are generally in favor of the concept of allowing an additional 15 percent to be attached in order to preserve state funded low-income housing, but reserve comment on the specifics of such a provision until we have had time to consider all the ramifications.

While NLHA supports a national pool from which HUD may refund PHAs for those famlies that move out of their jurisdiction, we are concerned that the funding for this pool will eat up precious fair share allocation funds. Therefore, NLHA advocates added appropriations to deal with the portability problem which is quite significant in a number of areas of the country. Lacking additional funds, NLHA urges that in areas that experience heavy portability, HUD phase in its refunds of assistance to ensure some monies for fair share competition.

Administrative Fees

NLHA believes the current method of calculating the fee each year based on the two bedroom Fair Market Rent is inappropriate and ineffectual as this method fails to take into account the true costs of administration. Furthermore, every ten years, the use of new census data causes unreasonable sharp declines in the fees due to reductions or rebenchmarking of the Fair Market Rents. This rebenchmarking has little or no relation to the cost of administration and simply puts PHA programs at risk. We strongly support a comprehensive and detailed study of the costs of administering the Section 8 program today. Studies currently relied upon by the Administration are faulty and completely out of date as they do not reflect the increased administrative costs associated with Family Self-Sufficiency implementation, increased portability, etc.

Furthermore, NLHA supports a simplification of the fee structure. Currently, a PHA must deal with three different percentages for administrative fees. PHAs receive 7.5 percent for their pre-1988 certificates, 6.5 percent for pre-1988 vouchers and

8.2 percent for post-1988 certificates and vouchers. Each year PHAs must compute for their entire allocation of pre- and post-1988 certificates and vouchers, a blended rate of these fees. NLHA advocates a streamlined system that uses one fee that covers today's administrative costs and is adjusted annually to cover increasing salaries, benefits, and other administrative expenses. Again, NLHA believes that a study is necessary to arrive at an appropriate methodology that will help determine what fees are appropriate for PHAs, be they large urban, small rural, or midsize PHAs as well as taking other pertinent facts into consideration.

Fair Market Rents

NLHA has long supported modifications to ensure more accurate Fair Market Rents (FMRs). We have long questioned whether the FMRs adequately reflect the market as well as the process for appealing the FMRs.

FMRs are often deemed inaccurate for a particular area - - a county on the edge of a large urban area or even a lower income section of an urban area frequently must abide by FMRs that do not truly represent its rents. For this reason, NLHA supports legislation which would require the use of sub FMR areas to take into account such pockets that vary from the norm.

Furthermore, when FMRs are deemed inaccurate there is virtually no cost effective way to challenge the inaccuracies of the numbers proposed by HUD. HUD promotes the use of the Random Digit Dialing (RDD) system to appeal their numbers. However, we believe the RDD system to be flawed. In addition, the costs for a PHA conducting an RDD study are prohibitive as studies range from $15,000 to $50,000 or more. While HUD claims that it will accept nonRDD studies - - in practice the Department generally rejects all nonRDD studies as statistically invalid. Furthermore, it fails to provide any guidance as to what type of nonRDD study it will accept, leaving PHAs with few alternatives and often resulting in a waste of both time and money as PHAs attempt to blindly challenge HUD's proposed FMRs.

NLHA urges that 1) the RDD methodology be examined, 2) HUD provide guidelines for acceptable RDD studies, and 3) HUD phase in sharp reductions in FMRs that occur decennially so that families, PHAs and landlords are not faced with such immediate sharp reductions in rent, available housing and administrative fees.

Thank you for allowing us the opportunity to present our views. NLHA looks forward to working with this subcommittee on these very important issues. If time permits, I will be happy to answer any questions.

QUESTIONS FOR MR. CHURCHILL FROM CHAIRMAN GONZALEZ

1. Can you share with the Subcommittee the results of your task force on the old section 8 projects, including how many owners may be interested in continuing to operate the housing as affordable housing and options for continuing affordability?

2. How do the legal issues differ in the case of section 8 projects from projects covered by Title VI of the Cranston-Gonzalez National Affordable Housing Act, the "Low Income Housing Preservation and Resident Homeownership Act of 1990".

Mr. Churchill's Responses to Chairman Gonzalez' Questions

Can you share with the Subcomittee the results of your task force on the old section 8 projects, including how many owners may be interested in continuing to operate the housing as affordable housing and options for continung affordability?

1. We have not yet completed the compilation of the survey. However, we can state that a very high percentage of owners - somewhere over 90% - would be interested in continuing to operate the housing as affordable housing assuming that an equitable rental agreement could be reached with HUD. This is indeed encouraging news for those of us interested in preserving our low income stock.

How do the legal issues differ in the case of section 8 projects from projects covered by Title VI of the Cranston-Gonzalez National Affordable Housing Act, the "Low Income Housing Preservation and Resident Homeownership Act of 1990"?

2. In the case of Section 221(d)(3) and Section 236 projects, the government entered into a 40-year loan arrangement with the owner; pursuant to the provisions of the promissory note, the owner has the right to prepay after 20 years. However, in that situation there is a 40-year structure in place, and it was on this basis that Congress felt that it could impose the restrictions set forth in Title VI of the Cranston-Gonzalez National Affordable Housing Act (LIHPHRA). In any event, under Title VI, the government in effect created an eminent domain type situation by providing the owner fair market value for the property - either through incentives to stay in, or through purchase by an entity that would keep the project low income. In the case of Section 8, at the end of its term the contract comes to an end. There is absolutely no hook to keep the owner in, such as a 40-year note. Accordingly, we see no legal way that the government can require the owner to stay in. Of course, the government could condemn the property and pay the owner fair market value, a solution analagous to that of Title VI. However, we do not sense there is much political will to take this step in view of the budget crisis which we are in and the perceived heavy expense of the LIHPRHA-type solution.

ELIZABETH FURSE
1st District, Oregon

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QUESTIONS FROM REP. ELIZABETH FURSE

TO MR. CHURCHILL

OF THE NATIONAL LEASED HOUSING ASSOCIATION

1. I understand that there are a good deal of residual receipts in the so-called "new reg." projects. Is there an accurate estimate as to how much money these residual receipts represent? How could we find a way to use these receipts? What, in your opinion, would be the best way to use these receipts--in rent reduction, in project restoration, or what? What would be the easiest way to re-invest these funds?

2. I am aware that HUD has been doing a study on residual receipts, and although we do not have anyone from HUD here this morning, I'm wondering if you have any knowledge of where HUD is with this study, and what their recommendations might be?

3. There is talk about a somewhat forced extension of Section 8 twenty year contracts, and I am wondering if you, the people who deal with this issue daily, feel that a mandatory approach is the best one? And could you also discuss the legal problems that would occur if you did force an owner to stay in the contract after its twenty year expiration?

ANSWERS TO QUESTIONS FROM REPRESENTATIVE ELIZABETH FURSE
TO MR. NEIL CHURCHILL OF THE NATIONAL LEASED HOUSING ASSOCIATION

1. I understand that there are a good deal of residual receipts in the so-called "new reg." projects. Is there an accurate estimate as to how much money these residual receipts represent? How could we find a way to use these receipts? What, in your opinion, would be the best way to use these receipts -- in rent reduction, in project restoration, or what? What would be the easiest way to re-invest these funds?

We are not aware of an accurate estimate of the amount of money in residual receipts accounts nationwide, but concur with your view that there is a significant amount of money in such accounts for the so-called "new reg." projects.

We believe that there are a number of ways to use these receipts. The first would be to credit them against the Housing Assistance Payments that HUD must make to the project annually under the HAP contract. Thus, if the annual contract obligation is $200,000 and there is $100,000 of excess residual receipts in the account, then the owner should be able to draw upon that $100,000 and HUD would only make $100,000 in contributions that year. I use the phrase "excess residual receipts" advisedly; the owner should be allowed to keep a reasonable amount of such receipts indefinitely to meet project needs such as significant repairs beyond those that can be funded out of the reserve for replacement.

Utilizing the funds as a credit against future HUD contributions would, in our opinion, be a good way to put these funds to work.

Second, HUD could well utilize the funds for the construction or substantial rehabilitation of additional low income housing. In view of the fact that HUD has no other generally applicable new construction program, this would be an especially creative use of the funds. We would achieve badly needed additional housing units without the need to appropriate more funding.

Third, some state agencies have utilized residual receipts, or the income from the receipts, to assist in the purchase of the Section 8 project by a non-profit, who would keep the project low income indefinitely. Under this proposal, the residual receipts funds would be well utilized for the

purpose of maintaining affordability for the housing's useful life.

Fourth, in the area of preservation, a good use of these funds would be to increase the number of loan management set aside contracts. HUD has been chronically short of funds for this vital need.

2. I am aware that HUD has been doing a study on residual receipts, and although we do not have anyone from HUD here this morning, I wondering if you have any knowledge of where HUD is with this study, and what their recommendations might be?

We cannot provide specific information as to where HUD is on the residual receipts study. We do know that HUD is now performing a comprehensive examination of the entire issue of the expiration of the HAP Contracts on the new construction and substantial rehabilitation projects. As part of this overall analysis, HUD is looking closely at the residual receipts issues.

3. There is talk about a somewhat forced extension of Section 8 twenty year contracts, and I am wondering if you, the people who deal with this issue daily, feel that a mandatory approach is the best one? And could you also discuss the legal problems that would occur if you did force an owner to stay in the contract after its twenty year expiration?

We are strongly opposed to a mandatory approach. We see no legal basis to allow the government to make an owner extend a contract once the contract has terminated. Presumably, the federal government could use its imminent domain powers to take the property, but this would be a costly and cumbersome procedure. The last business that HUD wants to be in is the property ownership business.

In reality, we imagine that the vast majority of owners will want to stay voluntarily in the program. The real question is, at what rents the contract will be renewed. This matter is currently under review by a blue ribbon commission of the National Leased Housing Association, which will be making its recommendation shortly. Likewise, HUD is also examining the question of renewals and renewal rents with the hope of presenting a legislative recommendation early next year. Significantly, at a recent meeting held at HUD with various individuals from the private, non-profit and public sector, there was virtually no sentiment for mandatory renewal from anyone.

Federal Rental Assistance

Testimony of Thomas R. Shuler
Managing Director
Insignia Financial Group, Inc.
Greenville, South Carolina
and
President of the National Apartment Association

On behalf of the
National Multi Housing Council
and
National Apartment Association

Before the
U.S. House of Representatives
Subcommittee on Housing and Community Development
Committee on Banking, Finance and Urban Affairs

November 3, 1993

Mr. Chairman, I greatly appreciate your invitation to participate in this morning's hearing.

This hearing takes on special importance as Congress and the Administration begin to consider substantial revisions to Section 8 rental assistance. The structure and administration of federal rental assistance affects not only the housing opportunities for low-income families across the country but also the quality of the nation's affordable housing.

I believe the Section 8 program needs a fresh rethinking if it is to serve its intended purpose: to provide low-income families with the broadest possible access to well-designed, well-managed, affordable housing.

Federal rental assistance in recent years has been shaped too often by political fights over housing production. While these debates have dragged on, housing markets were changing dramatically. This Committee now has an opportunity to refine Section 8 so that it reflects real market conditions and meets the needs of real people. The American multifamily housing industry wants to work with you to achieve those objectives.

Introduction

Thomas R. Shuler. Mr. Chairman, I speak today from 20 years of experience in the multifamily industry. I am President of Insignia Management Corporation, a subsidiary of the Insignia Financial Group, a fully integrated real estate service firm headquartered in Greenville, South Carolina. Insignia Management is the nation's largest manager of multifamily housing assets and properties, with responsibility for 135,000 apartments in over 800 properties located in 44 states.

Organizations Represented. I am here today on behalf of the National Multi Housing Council and the National Apartment Association, two important organizations that work together for an economic environment and governmental policies that support quality, accessible and affordable rental housing. Members of these two associations own and manage a large portion of the nation's 24 million rental housing units.

The National Apartment Association (NAA) brings together state and local associations of owners, builders, investors, developers and managers of multifamily properties into the nation's largest multifamily housing association. NAA represents more than 200,000 multifamily professionals who own or manage over 3.5 million apartments nationwide. I was recently elected NAA's 1994 President.

The National Multi Housing Council (NMHC) represents the country's larger and most respected multifamily housing firms. They are sophisticated corporations, many of which own and manage many thousands of rental units in a number of states. Member firms are engaged in all aspects of rental housing including the ownership, construction, financing, and management of such properties.

Commitment to work with the Committee. Mr. Chairman, I know of your life-long commitment to provide quality, affordable housing for all Americans. I know also that professionals in our industry have devoted their careers to achieving those same goals. My colleagues provide the investment capital and the management expertise that is needed to produce, upgrade and operate multifamily housing for millions of Americans.

Unfortunately for you and your colleagues, this Committee must give much of its attention to those parts of the nation's housing system that are troubled. I am sure you know, however, that most of the multifamily housing industry works well. It provides quality, affordable housing largely without government subsidies.

We share many goals in common. Working together, we can accomplish much for housing. I look forward to working with you and your colleagues much more closely than in the past.

Mr. Chairman, your letter of invitation asked the panel to address a number of important questions related to the effectiveness of federal rental assistance. My testimony will attempt to answer all the questions on which my expertise in multifamily management gives me special insights that may be useful to the Committee.

Tenant-based vs project-based rental assistance

The first question I will address concerns the proper roles for tenant-based assistance and project-based assistance in federal low-income housing policy.

Too often in the past, that question has been answered simplistically. Early federal policy tended to assume that all low-income housing had to be specially constructed. In recent years, many have argued that only tenant-based assistance is needed.

I believe that neither of those alternatives is sufficient. A sound housing policy must start by recognizing that local housing markets differ greatly -- not only from area to area across the country, but from time to time during economic cycles. Therefore, federal housing assistance must comprise several approaches that can be tailored, as appropriate, to different local market conditions.

Harnessing private resources for housing. I am certain that Congress can accomplish the most for affordable housing simply by providing a sound business and financial environment for the private multifamily housing sector. Many of our housing problems have been exacerbated by the lack of that sound environment in recent years. Tax policies of the late 1980s, regulatory policies that penalized multifamily lending, and other developments put multifamily investment and operations at a disadvantage. The impact of those policies more than wiped out the positive effects of federal housing programs that this Committee worked hard to support.

A positive development for affordable housing is that increasing numbers of private firms are intensively exploring ways to serve the market for more moderately priced rental housing. By fostering a good business climate for those firms, Congress could make the greatest possible improvement in the supply of quality, affordable housing for all Americans with the smallest possible cost to the government. This Committee has taken a number of favorable actions in this regard, and we look forward to working with you on other initiatives.

The following are my general comments on the role of different forms of federal housing assistance.

Tenant-based rental assistance is most appropriate when a local market has an excess supply of good housing that rents at or below HUD's so-called "fair market rent." If it is well designed and properly administered, tenant-based rental assistance can provide such benefits as: relatively low cost to the government, ease of targeting on the most needy, and increased housing choice by recipients.

In recent years, many local markets have had high vacancy rates, which make tenant-based assistance more workable. Those vacancies occurred from several factors including some overbuilding during the mid-1980s and the subsequent recession. Indeed, apartment vacancy rates are still at relatively high levels nationally, partly because more middle-income renters have recently shifted to homeownership in response to low mortgage interest rates.

There are several reasons, however, why national vacancy rates can be a misleading guide to federal housing policy. First, the national vacancy rates do not reveal important differences among local housing markets. Vacancies in one region are of no help to a family trying to find affordable housing near job opportunities in another region. Second, the vacancy rate tends to be higher at the upper end of the rental market and among smaller units. Those vacancies are irrelevant to most moderate-income and low-income families. The Harvard Joint Center for Housing Studies[1] points out that poor households who receive no housing assistance have suffered particularly sharp increases in rents despite the vacancy statistics. That is strong evidence that the actual rental market remains tight for housing that is more affordable in many areas. Third, the vacancy statistics include many apartments that have remained vacant for long periods of time because they are either substandard or uninhabitable. Those vacancies are also irrelevant to families seeking decent housing. Finally, national vacancy statistics overlook trends that could become very important in a few months.

One important trend is that many rental housing markets are moving out of a state of oversupply. During the recession, many people were forced to double up. Many young adults, for example, had to move back in with their parents. That pent-up demand is now beginning to be released as the economy recovers, but the growing demand comes into a market where the supply of new apartment units has been at remarkably low levels. Multifamily housing starts fell from a high of 150,000 units per quarter in the summer of 1985 to below 30,000 units per quarter in August 1993. That is less than the rate at which apartments are being lost from the stock. The supply of new apartments will be slow to increase because the time normally required for construction is long and the approval process across the country becomes more complex, costly and time consuming every year.

The consequences of this increasing demand and constrained supply are beginning to emerge. Three-month absorption rates for new apartments increased to 77 percent in the last quarter of 1992[2] from a low of 60 percent in 1987. Apartment rents have stabilized and even begun to increase in some markets. The pressure of tightening housing markets falls most heavily on families with the lowest incomes.

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[1] *State of the Nation's Housing 1993*, Harvard Joint Center for Urban Studies, Cambridge, 1993.

[2] That is the latest quarter for which revised statistics are available. *Current Housing Reports*, U.S. Department of Commerce, Bureau of the Census, September 1993.

Tenant-based rental assistance by itself does not provide a supply stimulus because the fair market rents are almost invariably below the levels that are needed to support construction or rehabilitation.

Project-based assistance in some form will be needed if federal assistance is to help increase the supply of housing affordable to low-income and moderate-income families in tightening local markets.

If some of the new supply is to reach low-income and moderate-income families, however, some project-based rental assistance must be made available -- along with capital subsidies to reduce the cost of production, and credit enhancement to attract private lending. I note that the Administration's proposed Government Reform and Savings Act of 1993 recognizes the need for project-based rental assistance in some markets. Other important production tools are the HOME Investment Partnerships program, the Low-Income Housing Tax Credit, and more effective FHA insurance. I urge you to ensure that all of these tools work together more efficiently than they have in the past.

Public housing must also be a continuing concern of federal housing policy because these assets, which provide housing for over 1.3 million families, could never be replaced and have not been adequately maintained in recent years.

Establishment of fair market rents

Mr. Chairman, in a second question you ask the panel to suggest alternatives for determining and verifying HUD's "fair market rents." You rightly note that the current system is open to question. I believe some significant improvements can be made.

Consequences of inappropriate rent standard. The "fair market rent" mechanism lies at the heart of the Section 8 program and does much to determine the program's effectiveness. The central difficulty is that the differences among local rental markets make some form of local rent standard necessary but the dynamism of those markets makes it virtually impossible for HUD's current procedures to get the standard right.

If HUD's rent standards are too high, the government will be overpaying for assisted housing. In that regard, I would like to comment briefly on the concern of some that HUD's "fair market rents" may even tend to drive rents up in local markets. It is possible that, over time, this effect could occur in certain neighborhoods or properties where there are heavy concentrations of Section 8

tenants. However, based on my experience with the factors that drive private market rent levels, I seriously doubt that Section 8 will ever be large enough to have much effect on a substantial segment of a local rental market.

Budgetary pressures are more likely to cause HUD's rent standards to be set systematically too low rather than too high. When the rent standard is too low, Section 8 recipients are forced either to pay excessive portions of their incomes for rent or to live only in the least desirable neighborhoods.

Need to mirror the real market process for setting rents. As the Committee considers improvements to the current system, it should try to reflect the actual process through which unsubsidized rents are set in the private market. That process follows the basic principles of supply and demand.

My testimony may be most helpful if I were to explain that process briefly. As a matter of routine practice, the managers of a conventional multifamily property shop their competition. They regularly review newspaper advertisements and other publications to determine what rental rates are currently being offered. They note what discount programs are in effect, and they compare the physical condition and amenity packages of their property with those of competing properties. They then set an asking rental rate that reflects their judgment of the perceived value of their unit.

If the apartment rents promptly at the rental rate asked, then the managers can have confidence that their judgment accurately reflects the market. If the unit does not rent within a reasonable time, managers consider either revising the rent levels asked or providing some incentive such as short-term discounts to get the unit rented promptly. Accordingly, the current rent roll of a conventional property reflects the historical market rents the property has been able to achieve, while the leases executed in the last 30 or 60 days, including any discounts, reflect the current local market rents.

It is important to note that each apartment unit can command its own individual market rate based on fine distinctions of location, view, amenities and other unique factors. Since each apartment is unique, private managers generally do ***not*** set one standard rate for all one-bedroom units in a property.

The revenue of a property is the result of both its physical occupancy and the average rental rate for the leased apartments. The manager's challenge is to maximize the property's revenue stream by maintaining both a good occupancy level and a fair market rate. That provides the income necessary to maintain the property adequately and to give the market return that is demanded by investors.

The market forces are quite unforgiving, and a manager's performance on these matters is vital to his or her success.

Current procedures fall far short. HUD's "fair market rent" standard will serve its purpose only to the degree that it reflects these real market dynamics. That is not easily done, and I recognize that the federal bureaucracy needs a system that can be administered simply. However, the current system falls far short. It tends to be administered in a way that most private managers are simply unable to accept.

Problems with local rent standards at the time of lease initiation become intolerable when arbitrary "rent reasonableness" procedures are used to prevent a manager from receiving rents that are commensurate with changing local market conditions.

I suggest that a well-functioning system will have to: (1) reflect variances in market rents within relatively small submarkets, (2) accommodate changing market conditions over time, (3) take account of differences in value among individual units within a community, and (4) permit Section 8 recipients a reasonable degree of flexibility to choose the amount of rent they are willing to pay for housing services in a fluid housing market.

Each of those improvements will need careful thought, Mr. Chairman. I make some specific suggestions below, but I and my colleagues in the multifamily housing industry are willing to work with you and others to help achieve a program that works.

Improving tenant-based assistance

Your next question asks about the proposed merger of the Section 8 voucher and certificate programs. I believe that the merger provides a valuable opportunity to improve Section 8 tenant-based assistance so that it can meet its stated purpose: to afford low-income families the broadest possible access to well-designed, well-managed, privately-owned rental housing.

Need for market acceptability. As an experienced multifamily housing professional, I am keenly aware that the program's purpose can only be achieved if vouchers or certificates are made acceptable to owners and managers in the private market as elements of normal business practice. The program as it is now designed and administered in many localities does not meet that test.

Most owners are very reluctant to participate in the Section 8 program. They consider it to be a bureaucratic mess, and feel strongly that participation would seriously interfere with their ability to follow sound management practices. That reluctance is often based on direct personal experience or on first-hand reports from others.

Some observers have tried to ignore flaws in program design by claiming that any owner's reluctance to participate simply reflects the owner's desire to discriminate against Section 8 recipients. That glib response will lead to self-defeating policies that are contrary to the public interest.

I note that Secretary Cisneros is giving high priority to the goal of opening housing opportunities for low-income families outside of neighborhoods with high concentrations of poverty. Section 8 tenant-based rental assistance ideally should be well-suited for that purpose. But, if it is to do so in the future, Congress and the Administration will have to take seriously the need to remove program flaws and to design Section 8 so that it is free of unnecessary barriers to participation by owners of good housing in good neighborhoods.

False assumption that rental assistance can ignore market forces. The problems with the Section 8 program have resulted from the tendency to design the program with the single-minded goal of avoiding abuse by slumlords. The need to make the program acceptable in the market seems to have been often ignored.

Some seem to believe that Section 8 can freely impose bureaucratic burdens on owners, beyond what is normal practice in the market, because the program provides substantial owner benefits by enabling more people to afford market rents. That assumption may be true for owners of marginal properties in bad neighborhoods. Such owners may have no other choice. They may be dependent on government assistance, and they may market their property primarily to residents who do not have many residential alternatives.

That assumption is simply not true for the vast majority of owners of conventional multifamily housing that is well-designed, well-located, well-managed, and competitive. Those owners must attract rental revenues from residents that have a broad range of incomes and have many alternative residential choices. They must compete for capital from investors who have many other investment opportunities. In the market segments that our members tend to serve, these factors can never be ignored.

Accepted practices especially important in strong markets. If it is to work, tenant-based rental assistance must start with a careful understanding of the market forces under which private owners and managers must operate.

Successful multifamily owners must excel at managing sensitive relationships among revenue, operating costs, housing quality and perceived value to residents. In today's competitive market, owners have little margin for error. They must produce market returns on investment without sacrificing necessary maintenance and modernization. They must create and maintain a residential community that is recognized in the marketplace as a desirable place to live by renters who have a relatively broad mix of incomes.

Most successful owners and managers in the private market are keenly aware of their need to look out for the interests of all their residents. They know what must be done to attract and keep good renters. They understand that their professional success depends on the degree to which they provide a quality living environment for residents of their properties. And they understand full well how fast a property's value can deteriorate if residents feel unprotected from disruptive or threatening behavior of others.

General problems with current program. In all these respects, Congress and the Department of Housing and Urban Development (HUD) should make common cause with professionals in our industry. The design and operation of Section 8, however, often does not show it. Section 8 regulations are designed to provide special rights for Section 8 residents. Owners find that the timing and amounts of Section 8 rent payments are often more erratic than rent streams that owners can expect from non-Section 8 residents. And the added difficulties in removing disruptive Section 8 residents are a potential threat to the revenue streams from other residents.

Non-market controls on rents. Private owners have much more difficulty in setting rents that reflect changing market conditions because of regulation both by HUD and local housing authorities. The Administration's proposed bill would retain the bureaucratic "rent reasonableness" procedures that housing authorities often impose on owner rents and rent increases. The experience of owner participants in Section 8 is that "rent reasonableness" limitations are often interpreted on a building-by-building basis and not in a way that recognizes differences that exist in the market from unit to unit. Continuing this unsophisticated approach, which is incorporated into regulations and HUD Handbook provisions, is unwarranted.

"Rent reasonableness" should be applied in a more focussed way. It is an understandable concern that owners not take unfair advantage of Section 8 by setting higher rents for Section 8 residents than they could receive from non-Section 8 residents. However, this concern is not met by determining reasonableness through an evaluation of an overall market, as HUD does in setting

and adjusting its "fair market rents," or by permitting only one rent for a class of units in an entire property.

"Rent reasonableness" should be limited to assuring that, within a given building, after taking into account unit-to-unit value differences that are ordinarily recognized in the market, an owner's rents and rent increases for Section 8 and non-Section 8 units are substantially the same. Under this more market-sensitive standard, rents should be presumed to be reasonable unless, without justification, Section 8 rents for a unit within a given building are higher than rents for a comparable unit in that building offered to non-Section 8 residents.

All or nothing Section 8 participation. The Administration's bill does not correct a major barrier to participation in Section 8 by owners who do not already do so. By statute (42 U.S.C. Sec. 1437f(t)) an owner who has entered into a HAP contract cannot refuse to lease any of the owner's units to any Section 8 applicant because of the applicants status as a holder of Section 8 assistance.

This provision was intended to open housing opportunities for Section 8 applicants, but it has just the opposite effect. Since an owner's decision to accept one Section 8 applicant, significantly alters the owner's burden of proof when choosing not to take any other certificate holder, the provision creates a strong incentive for an owner to avoid participation in Section 8 altogether.

This overly broad and vague statute subjects owners to arbitrary and unreasonable regulation. For example, the definition of "project" ("a residential building containing more than 4 dwelling units") is open to numerous interpretations, and the statute is silent as to a time frame. The provision should be repealed.

Overly-restrictive lease termination and eviction requirements. It is much more difficult to terminate the lease of or evict a Section 8 resident than a non-Section 8 resident. Initial one-year lease terms must be followed by an indefinite and automatic extension of the lease. Because there can be no termination at the end of a lease term, termination is allowed only for "good cause" (which term is defined in the statute and regulations). Furthermore, termination can be subject to a lengthy notice period and HUD approval. These requirements, which foster delay and uncertainty, have adverse consequences not only on owners but on other tenants in the building as well. The requirements exacerbate the differences between Section 8 and non-Section 8 tenants, rather than enable owners to treat both alike.

The effect of affording greater lease termination protection to Section 8 tenants than to others is the opposite of what Congress intended: the provision actually limits the number of apartments available to Section 8 holders because it severely

inhibits owner participation. The only way to ameliorate this situation is to ease these restrictions.

Abt Associates study. The National Apartment Association and the National Multi Housing Council are convinced that problems with Section 8 can be corrected in ways that advance the public purpose of the program and are compatible with the legitimate interests of Section 8 recipients.

To help ensure that responsible suggestions will get a fair hearing, NAA and NMHC have asked the nationally-recognized research firm Abt Associates to prepare a policy action report with their recommendations for improving Section 8 to make it more acceptable to property owners while not sacrificing the program's public purposes. Abt Associates has been a leader in rental assistance research for many years. The principal investigator for the research will be Dr. Meryl Finkel, who has been the project director or principal analyst on a series of research projects on the Section 8 program which Abt has conducted for the Department of Housing and Urban Development.

The study will gather information from four focus groups -- two will include owners and managers who have not participated in Section 8 and two will include those who have participated. Two sessions will be held in Washington and two in Dallas. In preparing their recommendations, Abt Associates will consider other research that takes account of observations by residents and public housing authorities.

We have asked Abt Associates to provide their recommendations in time to be useful during next year's Congressional consideration of Section 8 revisions. We look forward to discussing the results of that study with you as soon as they become available.

Responding to pressures on project-based Section 8

Mr. Chairman, your letter also asks panel members to address the federal response to preserve as affordable housing the Section 8 new construction and substantial rehabilitation projects with contracts expiring starting in 1995 and 1996. I understand your question reflects both a concern that the federal budget may not permit an extension of the current Section 8 contracts on all these properties and a concern that the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) is proving to be more expensive than expected.

I want to point out at the beginning that members of the National Apartment Association and the National Multi Housing Council tend not to have project-based

73-717 O - 94 - 4

Section 8 housing as a major part of their business. However, my own firm does manage approximately 200 Section 8 properties, which account for about 25 percent of our portfolio. I am familiar with the program through that experience.

Impact of failure to renew. Mr. Chairman, as you probably already recognize, there is no good solution to the problems that would be created if Congress cannot extend the expiring Section 8 contracts.

First, the families now living in that housing are among our most needy citizens, and they typically would not have many good alternatives if their Section 8 assistance were eliminated. I understand that a typical 100 unit Section 8 property has a waiting list of from 25 to 200 needy families.

Second, many of the Section 8 projects will be unable to survive as well-maintained housing without the subsidies. They are located in neighborhoods that are so distressed the properties will not be able to charge rents that can support maintenance, repair and other costs needed for ongoing economic viability. Wherever that happens, the effort to cut federal spending by not renewing Section 8 could easily be more than offset by losses created for the FHA insurance fund.

Third, it would become much more difficult or costly for the federal government to stimulate the production of low-income housing in the future. Past Administrations and Congresses have either explicitly or implicitly expressed their intention to renew expiring Section 8 contracts. Now failure to do so would mean that project-based rental assistance in the future would have to be of very long duration, requiring large amounts of budget authority. Private for-profit or non-profit sponsors would be unable to rely on assurances that shorter-term rental assistance contracts will be renewed.

Unattractive alternatives. If Congress cannot renew those contracts, several alternatives could be explored. Each property presents a unique set of challenges, and most alternatives present significant political and practical difficulties.

Some might suggest that HUD could give current Section 8 residents a voucher or certificate to mitigate immediate suffering and ease short-term political problems. However, in many cases that might only delay the impact on the family unless the family becomes upwardly mobile or the voucher itself is regularly renewed when it expires. Regularly renewing and administering voucher contracts, of course, could be as expensive as renewing the Section 8 project-based contract itself.

Another alternative would be to establish a hard-nosed "triage" system that identifies properties where further assistance is least justified. Decisions could be made not to renew contracts on properties that are structurally inadequate or are

located in areas that are extremely distressed or have an adequate supply of other low-income housing. However, HUD has not demonstrated an ability in the past to make decisions as tough as these.

Yet another alternative would be to identify Section 8 properties that could be economically viable without a renewal of rental assistance on every unit. In cases where this alternative is realistic, it could have the benefit of shifting the property toward mixed-income residency and applying market pressures to keep the property attractive to potential residents. However, I am not optimistic that this alternative could be successful in such a large number of locations that it would substantially reduce long-term federal costs.

Perhaps some might suggest even more dramatic changes in policy, such as extending the expiring contracts in a way that shifts more of the rent cost from the federal government to the Section 8 tenants.

Each of these alternatives would be extremely controversial. Professionals in our industry would be willing to work with this Committee to find alternatives that are compatible with the long-term public interest in decent, affordable housing.

Conclusion

Mr. Chairman, the budgetary, economic and political constraints under which this Committee must operate make your task more difficult, I suspect, than ever before.

I believe those constraints make it even more necessary than ever before for Congress to find more efficient ways to achieve national goals. And I believe those constraints make it more appropriate than ever for government and the private sector to join forces in the public interest.

I deeply appreciate your invitation to be here this morning, and I hope you can accept my sincere invitation to work with me and my colleagues in the multifamily housing industry to provide better housing for all Americans.

QUESTIONS FOR MR. SHULER FROM CHAIRMAN GONZALEZ

1. You say that most private owners do not want to participate in Section 8, and yet a lot seem to be willing to do so.

   Would you please explain from your own experience, or the experience of your colleagues, why Section 8 is not more widely accepted?

2. In your testimony you say that most private owners don't think the guaranteed rent payments provided by Section 8 are a valuable economic benefit?

   Could you give me more detailed numbers on that?

   If the program increases effective demand for an owner's housing, shy isn't that a real benefit?

   And why shouldn't the government expect to get some special concessions in return?

3. How do private apartment owners and managers determine the appropriate level of market rents?

   Could you be more explicit about how the HUD fair market rents could be set in a way that is more in tune with that process?

   You say that the "rent reasonableness" requirement is a barrier to owner participation, but you also admit that we need to make sure that private owners are not overcharging Section 8 recipients for their housing.

   The question is: How can we deal with both concerns?

(MR. SHULER)

December 9, 1993

Selected Issues on the Section 8 Voucher/Certificate Housing Assistance Payments Program

Answers to Chairman Gonzalez' Questions

1. **Would you please explain from your own experience, or the experience of your colleagues, why the Section 8 voucher/certificate program is not more widely accepted?**

Many owners are reluctant to participate in the Section 8 voucher/certificate program because they realize that doing so would severely undermine their ability to follow sound management practices. Professional managers focus intensely on the need to keep their valuable housing asset competitive in the market as a desirable living environment for all residents. Some problems with Section 8 tenant-based assistance result from the fact that the program is based on inconsistent or incorrect assumptions about the operation of the rental housing market. For example, one assumption underlying the Section 8 voucher/certificate program is that the program should help voucher and certificate holders to be treated in the marketplace the same as non-Section 8 renters. Yet HUD and local public housing authorities (PHAs) require Section 8 tenants to be treated ***differently*** from other residents. The program substantially increases managerial cost and risk for owners who accept Section 8 voucher/certificate residents. The program limits rental and other tenant revenue sources, regulates tenant selection, delays owner termination and eviction of tenants, and imposes bureaucratic monitoring of units leased to these tenants. Those aspects of the program strike directly at the ability of private managers to achieve acceptable financial and operating performance.

I will note several frequently mentioned barriers to participation that are now built into the Section 8 voucher/certificate program:

a. The experience of owner participants in the Section 8 voucher/certificate program is that "rent reasonableness" limitations have been interpreted on a building-by-building basis rather than recognizing differences that exist in the market from unit to unit.

b. The Section 8 voucher/certificate program creates a three-party relationship among the housing authority, owner and tenant, rather than the typical two-party owner-tenant relationship. Under Section 8, the housing authority and tenant have a contractual relationship through certificates and vouchers; the owner and tenant through the lease; and the housing authority and owner through the Housing Assistance Payments Contract (HAP). These three relationships are not well coordinated. Under the present program, the owner is often caught in the middle.

One problem is that payments under the HAP contract can be terminated by the housing authority even if there is no tenant lease violation. Such a situation occurs if the tenant has violated the Section 8 voucher/certificate eligibility requirements. Then, through no action or fault of the owner, the housing authority stops its portion of the rent payment to the owner. The owner must then terminate the lease on the grounds that the rent is not fully paid. But termination can be lengthy, and the owner, rather than HUD or the housing authority, bears the adverse economic consequences.

c. The requirement that the owner receive rent from two sources (the housing authority and the tenant) is unique to the Section 8 voucher/certificate program. Under some state and local laws, acceptance of a partial payment restricts the owner's ability to terminate the lease. These problems are magnified under the Section 8 voucher/certificate program, since the housing authority portion is generally larger than the tenant portion. An owner cannot always afford to escrow the housing authority portion when there is a delay in the tenant payment.

d. The security deposit for Section 8 voucher/certificate tenants is generally too small to deter destructive behavior or to compensate the owner for property damage.

e. Owners experience instability in tenant utility payments. Housing authorities typically pay a certain amount of utility payments directly to the tenant. Utility payments can be delinquent if the tenant does not pay these funds to the utility companies, or if there are excess utility costs not covered by the housing authority. Delinquencies cause interrupted utility services, which expose the owner to the potential of unit damage and expose other tenants to increased safety risks. Requiring a tenant to assume responsibility for such damage and providing for owner reimbursement, while helpful, are not preventives.

f. Despite a housing authority's obligations to make HAP payments to owners on or about the first of each month, owner experience is that HAP payments are often delayed by several weeks. There is no built-in consequence to HUD or the housing authority if the HAP payments are late.

g. The Section 8 voucher/certificate administrative process significantly alters an owner's normal ability to terminate a lease or evict a tenant. Unlike private unassisted tenancies, initial one year lease terms must be followed by an indefinite and automatic extension of the lease. Because there can be no termination at the end of a lease term, termination of the lease is allowed only for "good cause," which an owner must demonstrate under definitions provided in the statute and regulations. Program characteristics, such as these, inevitably create very deep resistance when they weaken an owner's ability to move promptly to protect the ability of all residents to live in a community that is free of disruptive or threatening behavior from others.

h. The program requires each unit occupied by a Section 8 voucher/certificate resident to be inspected not only before the resident moves in but also annually throughout the lease term. These inspection procedures duplicate numerous federal, state and local requirements; they overlook the fact that most owners of professionally managed rental housing have strong built-in market incentives to maintain high quality units; and inspection delays create undue vacancies to the detriment of tenants and owners. The program makes no provision for streamlined procedures that could provide precertification of well-managed properties.

i. The program makes the owner solely responsible for complying with housing quality standards, even when non-compliance results from circumstances under the resident's control rather than the owner's.

Although these examples are not the only problems perceived by responsible owners, they are illustrative of ways in which the current operation of the Section 8 voucher/certificate program creates barriers to participation by private owners.

2. **Why do most private owners think the Section 8 voucher/certificate program does not offer a valuable economic benefit? Aren't the guaranteed rent payments, which increase effective demand for the owners' housing, a real benefit? Why shouldn't the government expect to get some special concessions in return?**

An assumption often made in discussions of the Section 8 voucher/certificate program is that the program guarantees rental payments and therefore provides owners with such an unusual economic benefit that it can impose unusual requirements in exchange. That assumption is not accurate for the overwhelming majority of professionally managed rental housing, which is well-designed, well-located, and competitive. First, rental payments under the Section 8 voucher/certificate program are ***not*** assured. As noted elsewhere in my testimony, bureaucratic delays, arbitrary decisions and other aspects of the Section 8 voucher/certificate program often make rent receipts significantly ***more*** vulnerable to delays and interruptions if an apartment is rented to a Section 8 voucher/certificate resident than if it had been rented to a non-Section 8 voucher/certificate resident. Some owners, after participating in the Section 8 voucher/certificate program, find that Section 8 voucher/certificate apartments may even provide negative rents, after taking account of the additional costs of paperwork, more intensive tenant screening, delays in rent payments, managerial costs resulting from Section 8 voucher/certificate resident behavior, and reduced revenues from other units. Second, the Section 8 voucher/certificate rental payments provide a unique economic benefit only when a property is of marginal marketability, that is, when acceptable occupancy rates cannot be achieved with normal marketing strategies. Those circumstances are found primarily in bad neighborhoods or temporarily in regions suffering severe recession. However, that is a rather small portion of the nation's rental housing. In relatively good neighborhoods and under most economic conditions, professional housing managers can readily achieve acceptable occupancy rates. They know how to attract adequate numbers of good renters. That is their business. And they do not need the Section 8 voucher/certificate program to do it. For them, Section 8 voucher/certificate payments bring no added economic benefit.

If the Section 8 voucher/certificate program is to fulfill its purpose of opening housing opportunities for recipients -- and not just in the least desirable neighborhoods -- then the key question must be how can the program be made an accepted part of normal business practice for the vast majority of owners who provide good housing in good neighborhoods.

3. **How do private market owners and managers determine the appropriate level of rent? How could HUD set fair market rents so that they are more in tune with that process? How can we remove the barrier to owner participation created by the "rent reasonableness" requirement, and yet make sure private owners are not overcharging Section 8 voucher/certificate recipients for their housing?**

NMHC and NAA recognize the need to assure that the availability of Section 8 voucher/certificate assistance does not create rent overcharging. The challenge, however, is to achieve the objective in a way that is administratively efficient and that accommodates the complexity and fluidity of real market behavior.

Private apartment owners and managers typically determine the appropriate level of market rents by assessing forces of supply and demand in the local market. They closely monitor the performance of similar housing that is competing for renters in the same market. Rents therefore change significantly in response to seasonal factors, local economic changes, nearby competition and other market-driven factors. Newer properties with more amenities typically command higher rent levels than older properties. Those with the best locations are able to charge higher rents. Importantly, rents within a given property reflect differences not just in the apartment size, but also in an apartment's configuration, view, and other details related to marketability. For example, professional managers typically do not set one fixed rent for all one-bedroom apartments within a building; the rents may vary significantly by floor, orientation, amenities and other factors. Many subtle adjustments in price are made regularly, often through the use of temporary rent concessions or other incentives tailored to changes in the market.

As currently administered in many localities, Section 8 voucher/certificate "rent reasonableness" is often determined in ways that are overly simplistic and inconsistent with the way the private housing market actually operates. Too often, public housing authorities rely on outdated market information and rather crude analysis. The Section 8 voucher/certificate program in practice overlooks powerful economic factors that unavoidably dominate the managerial thinking and behavior of most private housing professionals. That is a weakness in the design and administration that creates a powerful barrier to program participation.

When dealing with professionally managed multifamily properties, perhaps the best way to assure rent reasonableness would be to require an owner to certify to the public housing authority that rents charged to Section 8 voucher/certificate residents are no greater than those charged to non-Section 8 voucher/certificate renters for similar units at the time the lease arrangements are made. The time for comparison would be a period of several months prior to the lease, which would normally be considered by managers when establishing rents. To be workable, the requirement would explicitly have to accommodate normal, well-established, market-driven distinctions in rents charged over time from one unit to another within a given property. The owner could be required to keep appropriate documentation to support the reasonableness of the rent charged. The housing authority could then easily, on a post hoc basis, monitor the rent levels charged and identify any rent that is unreasonably high, without delaying normal operations of the property.

MR. SHULER'S RESPONSE TO COLLOQUY WITH CHAIRMAN GONZALEZ

What is the approximate percentage of owners who do seek to participate in the Section 8 program?

Unfortunately, an answer to this important question cannot be based on objective data. There is no central databank of owner participation in Section 8, and even if one existed, it could not indicate how many participating and non-participating owners actually ***seek*** to participate. In responding to the question, I have kept several things in mind. First, a number of owners have properties that rent at levels significantly above HUD's fair market rent, and therefore are not relevant to the operation of the Section 8 voucher/certificate program. Second, much of our nation's rental housing is owned by individuals and small firms with only a few units each. Their desire to participate in the program may change quickly with changes in local economic conditions, or even in response to the circumstances of a particular resident. Third, a growing portion of our rental housing is owned and managed by firms with large portfolios of professionally managed apartment properties. Such firms may find that Section 8 voucher/certificate participation is appropriate for some properties and not for others.

With these caveats, on the basis of my experience in the industry, I estimate that a typical firm owning and managing a substantial number of rental units would have Section 8 voucher/certificate residents in about ten percent of their properties.

I have discussed your question with a number of industry professionals who have considerable experience in the rental housing industry. In their opinion, a private owner would seek to participate in the Section 8 voucher/certificate program, as it is now administered, *only* when a property would otherwise be in serious financial difficulty. On the basis of their experience in the industry, they estimate that the percentage of professionally managed properties falling into that category is substantially less than ten percent.

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Testimony Of

PAUL T. GRAZIANO
DEPUTY GENERAL MANAGER FOR OPERATIONS
NEW YORK CITY HOUSING AUTHORITY

On Behalf Of The

COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES
(CLPHA)

Before The

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

November 3, 1993

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Testimony of Paul T. Graziano
Deputy General Manager for Operations
New York City Housing Authority

INTRODUCTION

When Congress authorized the Section 8 Housing Assistance Program nearly twenty years ago[1], it provided a new and valuable resource for local communities to meet the housing needs of low income citizens. Today, the Section 8 program remains an important tool in national housing policy.

Over the years, there has been a growing recognition that the housing problems in most communities are as diverse as the households in need. For some, housing problems are most directly a function of inadequate incomes. Tenant based Section 8 programs suit such households quite well. In some communities, housing problems are related to physical condition and quality of housing stock. At other times, an inadequate supply of housing or the wrong mix of housing (e.g. insufficient large apartments or accessible to people with disabilities) most frustrates low income households. And, at times the housing problems may be first and foremost rooted in social, psychological or medical problems, such as racial discrimination, domestic violence or mental illness.

The Section 8 tenant based and project based assistance programs, have been successful, in part, because they provide for differing needs in differing markets. The New Construction, Substantial and Moderate Rehab programs have helped address housing supply problems while the tenant based programs have helped stimulate low income housing demand. As the years have passed, however, new rules and regulations and a proliferation of Section 8 set-aside programs have all weakened the Section 8 program. Some changes have made the program more fair and accountable. Other changes, however, have only increased administrative expenses, diminished flexibility or reduced the amount of subsidy available to fill other pressing housing needs.

Given the great diversity of housing needs across this country, and the current spirit for reconsidering bureaucratic shibboleths, I encourage the Subcommittee to take a renewed look at the array of programs collectively called Section 8. The merger of the Certificate and Voucher programs, while an important step in reducing government inefficiencies, is far from "reinventing government". The proliferation of set-aside programs, the unnecessary inflexibility of many program regulations, and the rigidity across programs must all be reviewed. Congress should consider providing for a single Section 8 program which permits

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[1] Pub. L. 93-383, §201(a), 42 U.S.C. § 1437f.

maximum local discretion to meet local needs. There should be full fungibility between *tenant and* project based programs. Local determination on special categories of assistance should be permitted as well as local preference for admission.

Because of the reality of complex and distinct housing markets across the country, the 1990 National Affordable Housing Act requires recipients of most federal housing funds to submit a Comprehensive Housing Affordability Strategy (CHAS) identifying and prioritizing housing needs and establishing local solutions. HUD should look to a City's CHAS to establish the most appropriate use of Section 8 resources, whether it be for TBA, for moderate rehabilitation, or new construction.

It is worth emphasizing that statutory provisions that tie assistance to particular categories of recipients may be popular among certain advocacy groups, but complicate program administration for both HUD and local housing agencies. Each targeted allocation requires a separate application and ACC amendment, with all the attendant paperwork and resulting delay. Congress may instead consider setting non-binding goals in lieu of targeted allocations. Local Section 8 administrators could then apply those goals, and HUD could monitor performance, in light of local conditions. Alternatively, Congress could establish general principles for allocation of Section 8 assistance to certain classes of recipients, similar to assistance principles established in federal housing preferences, and let local administrators decide, based on local conditions, which of those classes will obtain a share of Section 8 assistance, and to what degree.

EXISTING HOUSING/TENANT BASED SECTION 8

When it enacted the Housing Voucher program nearly a decade ago[2], Congress created a *de facto* competition between the Housing Voucher program and the original Housing Certificate program, so that for nearly a decade, HUD and local housing agencies have been required to administer parallel tenant-based housing programs with parallel statutory requirements and parallel sets of governing rules, regulations and funding notices[3].

Most strengths and weaknesses of the two programs were intuitively obvious and others were readily apparent early on in the Voucher Demonstration period. Industry groups and most local housing authorities have for the entire life of the voucher program protested this wasteful, inequitable and confusing duplication of efforts. The United States government can no longer afford the questionable luxury of maintaining competing tenant-based housing programs. The time has come to take what is best in each program, and to create a unified tenant-based housing assistance program.

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[2] Pub. L. 98-181, § 207; 42 U.S.C. § 1437f(o).

[3] *See* 24 CFR Parts 882 and 887.

This past February, HUD started the process of creating a unified program by publishing a proposed Conforming Rule for the Section 8 Certificate and Voucher programs.[4] However, that proposed rule was far longer and more complex than it should have been, because HUD was hamstrung by the inherent differences between the statutory requirements for the Certificate and Voucher programs. Once Congress gives HUD clear, consistent and uniform statutory requirements for its tenant-based housing program, HUD will be able to streamline not simply its paperwork, but its administrative practices, with the resulting substantial saving of money and effort.

ELEMENTS OF A NEW, UNIFIED PROGRAM

We believe that the following elements are essential to a unified tenant-based assistance program:

- ABOLISH THE "SHOPPING INCENTIVE CREDIT" AND "PAYMENT STANDARD" METHOD OF ASSISTANCE
- RETAIN THE FLEXIBILITY OF "EXCESS RENT" TENANCIES, BUT PROTECT "EXCESS RENT" TENANTS AGAINST RENT GOUGING
- RETAIN THE FAIR MARKET RENT, HOUSING QUALITY AND RENT REASONABLENESS STANDARDS
- RETAIN THE CURRENT FIVE-YEAR TERM FOR ANNUAL CONTRIBUTIONS CONTRACTS
- ALLOW FLEXIBILITY IN UNIT DISTRIBUTION

Each of these elements is discussed below:

ABOLISH SHOPPING INCENTIVE CREDIT AND "PAYMENT STANDARD"

The "Payment Standard" and associated "Shopping Incentive Credit" method of computing Section 8 assistance in the Housing Voucher program[5], aside from its inherent difficulty to administer, does not, nor has it ever, fulfilled its statutory purpose, which is to provide low-income families an incentive to shop for low-cost housing. In practice, the

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[4] 58 Fed. Reg. 11292 (February 24, 1993). We have taken the strong position that HUD should not publish any conforming rule until a total merger can be accomplished. Otherwise PHA and HUD could be faced with four different sets of regulations within one year; the current two rules (parts 882 and 887), a conforming rule with statutory distinctions remaining, and a final rule following passage of merger legislation.

[5] *See fn. 4, supra.*

"payment standard" has proven to be a *disincentive* to shop, which only promotes economic segregation.

In theory, a family that receives a housing voucher is rewarded - with reduced rent - when it shops for an apartment that rents for below the applicable Payment Standard. In reality, most families that obtain this benefit do not shop at all, but apply their vouchers to their current apartments in which the rent may be deflated due to its condition, location, long term tenancy or applicable rent-control laws. HUD has wasted millions of dollars by subsidizing Voucher families who rent "in place" at rents below the Payment Standard. As a result, families who would have been happy to enter the Section 8 program and pay 30% of their income for rent have instead paid 11-20% of income for rent. All this came about because under the Voucher concept, the subsidy is not determined by the real rent for the apartment, but by a "book" figure, the Payment Standard.

When families with housing vouchers actually shop for housing at below-FMR rents, they tend to obtain housing of marginal quality, or which is located in areas with concentrations of low-income families. Thus, to the extent that the "payment standard" provides a shopping incentive, it is an incentive to economic and/or racial concentration which Congress should no longer tolerate.

The "Payment Standard" also operates to the disadvantage of those families who want to use their housing vouchers to obtain apartments that may rent for above the applicable FMR level, since those families do not know what their appropriate maximum rent burden should be. In areas with a tight rental market, landlords have exacted from housing voucher families an amount of excess rent that has raised their total rent burden above the 50% threshold for a federal housing preference. Just as some families (largely "in place" rentals) were paying 11-20% of income for rent, many other families with Vouchers (largely those who moved) were paying 40% or more of their income for rent. Congress should remedy this defect by providing, as part of the unified tenant-based program, an expanded and reformed version of the current excess-rent component (discussed in the next section) of the housing certificate program.[6]

EXPANDING AND REFORMING THE EXCESS RENT COMPONENT OF THE HOUSING CERTIFICATE PROGRAM

In Section 543 of the National Affordable Housing Act (NAHA)[7], Congress authorized public housing agencies (in certain circumstances, with HUD approval) to allocate up to 10% of the assistance provided under the housing certificate program for "excess rent" tenancies, in which the tenant would be permitted to pay, in addition to its statutory rent (for most tenants, 30% of income[8]), an amount in excess of the total Section 8 assistance

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[6] 42 U.S.C. § 1437f(c)(3).

[7] Pub. L. 101-615.

[8] 42 U.S.C. §§ 1437a(a); 1437f(c)(3)(A).

contract rent.[9] This legislation allocated a portion of Section 8 assistance so that some families with certificates would have the same freedom as voucher families to trade an increased rent burden for an enhanced quality of housing, while freeing the administering housing agency from the computational nightmare of the Payment Standard.

We believe that the excess rent component of the certificate program should be made available to all who choose and should replace the voucher program and its Payment Standard method of computing housing subsidies. HUD, in a narrative description of its recent merger proposal, concludes that the option to pay more than a 30 percent rent burden "should be the sole choice of the family" as "it would be difficult for PHAS to chose which families could exercise an option to pay a higher rent". We agree and we further believe that Congress should retain the housing certificate program's emphasis on affordability by placing ***a cap on the tenant's total payment***, so that tenants who elect to use excess-rent certificates are not victimized by owners who otherwise may be prone to take advantage of a tight housing market.

We suggest three alternative methods for computing the rent cap:

- As a percentage of the tenant's income.
- As a percentage above the applicable FMR.
- As a percentage of the tenant's income and as a percentage above the applicable FMR.

Although any of these methods would be an improvement over the current absence of a rent-cap, and although HUD in its proposed conforming rule has opted for the first method[10], we prefer the combined method, because it would provide clear information about the maximum rent that the landlord could receive and it ensures that no individual tenant (even at the lowest income levels) suffers an excessive burden. A rent burden not to exceed 35 percent of adjusted gross household income and at a rent not to exceed 132 percent of the FMR is proposed.

We are seeking to balance here the need for flexibility, so that a family is not barred from renting an apartment just because it is a few dollars over the Fair Market Rent with the need for "affordability" so that the family does not pay 40%, 50% or 60% of its income for rent. There are always those who see this issue as one of personal freedom, and insist that every family should have the freedom to rent at whatever level it wishes. We do not subscribe to that notion and believe it is essential to place a cap on Section 8 rents. In this context, I quote from a New York Times editorial of several years ago: "The lost freedom is no more than the freedom to pay more than 30 percent, perhaps more than 50 percent, of

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[9] *See fn. 6, supra.*

[10] Proposed 24 CFR § 982.505.

a meager income for housing. That is no more useful that a poor Frenchman's freedom to steal bread or sleep under bridges."

RETAIN THE FAIR MARKET RENT, HOUSING QUALITY AND RENT REASONABLENESS STANDARDS

The Fair Market Rent standard is intended to ensure that low income program participants can gain access to a significant share (currently 45%) of the standard housing market. The FMR, Housing Quality and Rent Reasonableness standards, as well as the Certificate program's cap on rent burden, are the four pillars supporting the Section 8 program. They ensure market access at reasonable rents with decent quality and affordability.

These are the essential elements of a tenant based rental assistance program. Anything more is discretionary and sometimes detrimental to the program's simplicity and effectiveness. Anything less ensures that the program will operate at great inefficiency and will fail to meet its primary objectives. The payment standard is an example of an unnecessarily complicated add-on introduced with the Voucher program, which provides minimal benefit and great confusion for tenants, property owners and PHA staff alike. Conversely, the absence of (actually the prohibition against) a rent reasonableness standard was an extremely costly omission in the original voucher program.

THE TERM OF A SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT SHOULD NOT BE FURTHER REDUCED

In 1974, Congress declared that the term of a Section 8 Annual Contributions Contract (ACC) between HUD and a local housing agency should be 15 years.[11] A decade later, Congress elected to reduce the term for new and renewed ACCs to 5 years.[12] We urge Congress not to further reduce the ACC term, since the benefits, if any, are vastly outweighed by the drawbacks of a shorter term.

A shorter term would not enhance HUD scrutiny but instead increase confusion. Local housing agencies routinely experience lengthy and unexplained delays from HUD field offices in the renewal of expiring ACCs. A shortened ACC term would only exacerbate this problem by creating a bigger backlog of contracts to be renewed. The pressure on HUD to process renewals would overwhelm its ability to scrutinize the ACCs that are subject to renewal.

Aside from the issue of HUD's current problems in dealing with expiring ACCs, we suggest that shortening the ACC term would send the wrong message to the private housing sector on which the Section 8 program depends for its survival. A shortened ACC term would tell owners of eligible housing that they cannot be sure of the federal government's

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[11] Former 42 U.S.C. § 1437f(d)(2).

[12] Pub. L. 98-479, § 102(b)(6).

long-term commitment to the Section 8 tenant-based program. In effect, a shortened ACC term would be a clear vote of no confidence in the program, and a clear disincentive to landlords either to remain in or to join the Section 8 program.

Finally, the Project Based Certificate program, which is now greatly hampered by the 5 year ACC, would be totally crippled by a shorter term.

ALLOW FLEXIBILITY IN UNIT DISTRIBUTION

One aspect of the Voucher Program is clearly superior to the Certificate Program. In the Certificate Program the number of units in an ACC allocation and the distribution of those units is specified and cannot be revised without HUD approval, beyond minor adjustments. The Voucher Program allows great flexibility and local discretion regarding the number and distribution of units. The merged program should adopt this provision. However, in order to protect against an erosion in program size through appropriations shortfalls or freezes, there should be a guarantee of ongoing funding adequate to generate a constant number of two bedroom units within an allocation over time.

OTHER PROGRAM REVISIONS

PORTABILITY

Any future changes to the Section 8 tenant based programs must confront the growing problems associated with portability. Congress should require that with each yearly allocation of Section 8 funds, "receiving" PHAs should be required to absorb those cases for which they are presently billing "initial" PHAs. The accounting and administrative problems of the current system are unnecessary.

RESTORE OWNER FREEDOM IN TENANT SELECTION

We urge Congress to repeal that part of the Section 8 statute that prohibits the owner of a "multifamily housing project" i.e. any residential building with more than 4 units, who has previously accepted a Section 8 tenant, from refusing to accept a new Section 8 tenancy, absent good cause (which cannot include the simple desire not to enter into a new Section 8 contract).

Ironically, while this clause was intended to maintain the supply of available Section 8 units, it has had the effect of discouraging property owners from entering the program. Property owners--particularly owners of small buildings which nevertheless qualify under the clause as "multifamily housing project[s]"[13]-- perceive this requirement as tying them to the Section 8 program in perpetuity. Large landlords have the resources to meet the legal standards imposed by this clause to reject a prospective Section 8 tenancy. Small landlords are compelled to accept tenants who they otherwise would reject, for fear of lawsuits that small landlords may lack the resources to fight. A better alternative would be an amendment to the Fair Housing Act which prohibits discrimination based on source of income or receipt

[13] 42 U.S.C. 1437f(t).

of subsidy. Thus all owners would be equally at risk if they refused to participate in the program.

CONGRESS MUST CLARIFY THE RIGHTS OF PUBLIC HOUSING TENANTS WHO APPLY FOR SECTION 8 ASSISTANCE

Section 545(a) of NAHA added to the statutory provision governing federal and local preferences in the Section 8 program[14] the proviso that "any family otherwise eligible for assistance under this section may not be denied preference for assistance not attached to a structure (or delayed or otherwise adversely affected in the provision of such assistance) solely because the family resides in public housing". (Emphasis added.) In its proposed Conforming Rule, HUD has interpreted that language to mean that a family which has moved into an apartment in public housing and which has applied for Section 8 assistance retains the preference it had before it moved into public housing.[15]

We do not believe that this is either a correct interpretation or good policy. A family that resides in an apartment (which happens to be located in a public housing development) of appropriate size, that meet HUD's housing quality standards, and for which it pays no more than 30% of income as rent, should not be entitled to a housing preference.

We propose that Congress remove the clause benefiting public housing tenants from the section on preferences. Instead, there should be a separate clause on nondiscrimination against public housing tenants, as in an early draft of the Senate version of NAHA (S. 566)[16]:

> Nondiscrimination against public housing residents. -- In selecting families for the provision of assistance under this section, a contracting agency or an owner of federally assisted housing receiving... rental credits may not exclude or penalize a family solely because the family resides in a public housing project.

RENT AND FEE ISSUES

REFORM THE PROCESS OF DETERMINING FAIR-MARKET RENTS

We urge Congress to direct HUD to determine FMRs by a method other than the current rigid census-based mathematical formula. 1994 FMRs, based on the 1990 census,

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[14]42 U.S.C. 1437f(d)(1)(A)(i).

[15]Proposed 24 CFR 982.202 (c)(4).

[16]135 Cong Rec. S. 2572, 2587 (March 15, 1989).

may very well have a devastating impact on the Section 8 program in many communities by sharply reducing rent levels and fees. This problem occured as well after the 1980 census and corresponding changes to FMRs. A mathematical formula should be the starting point rather than the end of HUD's analysis.

It is essential that FMR levels represent rents throughout the market, not merely low income neighborhoods. Generous FMRs can further the goal of increasing Section 8 participants' accessibility to high quality housing. Conversely, inadequate FMRs contribute to racial and economic concentration.

SECTION 8 ADMINISTRATIVE FEES SHOULD BE UNCOUPLED FROM FAIR MARKET RENTS

We urge Congress to begin the process of de-coupling FMRs from administrative fees. The current relationship between FMR and administrative fees is more an accounting convenience than a recognition of the costs or performance of administering agency. In fact, in many cases we have seen that the same economic hard times that depress FMRs may also complicate Section 8 administration, driving up costs. In hard times:

- as rents decline, more households seek higher quality units or better neighborhoods, increasing inspections and lease-up;
- more landlords encounter financial problems that lead to housing quality and other program violations;
- more tenants encounter problems that may lead to administrative termination proceedings.

As an example of the problems associated with the current administrative fee structure, labor and other operating expenses are particularly high in New York City. However, HUD's FMRs for New York are comparatively low. When comparing the FMR/Cost Index ratio, with Boston for example, the disparity is evident.

HUD has recognized this problem and has over time studied alternative methods of determining the appropriate amounts of administrative fees. In a 1988 study of the cost of administering Section 8 Certificate and Voucher programs Abt Associates appropriately stated (in an otherwise inconclusive study):

> Ultimately, HUD must determine reimbursements not simply in terms of costs (since total PHA costs for all programs necessarily equal total PHA

reimbursements from all sources), but also in terms of the level of administrative services desired.[17]

Any new system must recognize that program administration expenses are affected in part by the size and/or geographic area of the program. HUD must also avoid the temptation to resolve the administrative fee question through a rigid and bureaucratic budget and accounting system in which every line item, position and expenditure is scrutinized. One of the positive characteristics of the current fee structure is that it has always been intended to provide an incentive for PHAs to perform well (i.e. lease units). We urge Congress to maintain this notion and direct HUD to report its findings on this subject no later than December 31, 1994.

PROJECT BASED HOUSING PRODUCTION/PRESERVATION

I would also like to address several issues related to the current project based Section 8 programs. Preservation concerns around Section 8 projects can be categorized as either physical or market. Physical problems include the substantial deterioration of projects; market concerns relate to the question of preserving such projects in the affordable housing stock.

As noted earlier, PHAs should be provided much greater flexibility in utilizing Section 8 Certificates and Vouchers for Project Based Assistance (PBA). The current PBA rules make the program unworkable or of only limited usefulness in many communities. Initial rent determination should be based on a cost (rather than a rent reasonableness) approach and must include the option for utilizing exception rents outside of any overall program cap on such rents. Initial rents must be adjustable if legitimate cost-overruns occur during the construction process. ACC terms must be maintained at 5 years, at a minimum, with renewal mandatory by the PHA unless funding is unavailable or there is a substantial and chronic breach of contract.

I would also like to point out that there is a substantial need for capital improvements in projects developed under the Section 8 Moderate Rehabilitation program. Given the minimum levels of rehabilitation that were provided for under the program, many of these projects will require additional resources prior to the expiration of their 15 year ACCs. Funding may be required in the form of additional capital contributions, rent adjustments or other assistance.

Many developments funded under the Section 8 New Construction and Substantial Rehabilitation programs also face significant unfunded capital needs. NYCHA owns 8 such projects with a total 980 units. During the current calendar year these projects are expected to sustain a total of over $550,000 in operating losses; combined they face over $7 million in

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[17]Abt Associates, Administrative Costs of the Housing Voucher and Certificate Programs, 1988, p. 73.

unfunded capital improvement needs. The tools currently available to PHAs to cover such losses are limited.

CONCLUSION

In line with the administration's efforts to examine and, where needed, to reform the operations of each federal agency, it is appropriate for Congress to be part of that process by making those statutory changes that are prerequisites for administrative reform. The Section 8 housing assistance program is one in which statutory reform is essential to make administrative reform possible. We therefore urge Congress to expeditiously enact legislation to merge, reform and streamline the Section 8 program.

Statement of
Congressman Cal Dooley
before the
House Banking Subcommittee
on Housing and Community Development

Wednesday, November 3, 1993
10:00 a.m.

Mr. Chairman, I'd like to thank you for holding today's hearing on Section 8 housing.

Recent articles published in the Bakersfield Californian in my district and in the Washington Post have identified problems with Housing Assistance Payments rents paid to owners of federally subsidized apartments.

Section 8 rents are supposed to reflect fair-market rents of comparable apartments in their area, but as statistics compiled by the Department of Housing and Urban Development show, automatic annual adjustment increases often result in rents for Section 8 units that greatly exceed the rents in neighboring complexes. A recent article in the Washington Post described a similar problem in Washington, D.C., where HUD continues to pay outrageously high rents for sub-standard housing. The Bakersfield Californian has written extensively about problems with HUD rent subsidies in Kern County, California.

Clearly, inflated Section 8 Housing Assistance Payments are costing the federal government millions of dollars a year. In Kern County, a comparability study indicated that in 1993 alone, HUD's Housing Assistance Payments to three apartment complexes exceeded the area's median rent by $758,568.

I recognize that Section 8 rents and assistance payments

need to be somewhat higher than other rents to cover administrative costs. However, HUD estimates that the problem of egregiously inflated rents is widespread. We need to make better use of our scarce housing dollars.

I am an original co-sponsor of H.R. 2470, legislation that would allow the Secretary of HUD, if justified by a comparability analysis, to reduce Housing Assistance Payments. H.R. 2470 offers one solution to the problem of inflated Housing Assistance Payments. Undoubtedly, there are others. I look forward to working with you, Mr. Chairman, and other members of the committee, to find an equitable solution to this problem so that we can ensure that our housing dollars are put to the most effective use.

Congressman Bill Thomas

21st District, California

Statement of the Honorable
BILL THOMAS
Member of Congress, 21st District of California

before the
Subcommittee on Housing and Urban Development

November 3, 1993

Mr. Chairman, since my request to personally testify before the Subcommittee on my bill, H.R. 2470, was denied, I am forced to submit my comments in writing. As you know from our continued correspondence, H.R. 2470 would enable the Department of Housing and Urban Development (HUD) to review the rents paid to the owners of Section 8 New Construction projects and reduce rents if they unnecessarily exceed the average rent paid for comparable units in the area.

This issue was brought to my attention through the attached article which ran in a local newspaper in my district. According to the article, HUD is subsidizing rents of $760 for two-bedroom units and $942 for three-bedroom units at Villa del Commanche located in Arvin, California. However, the typical two-bedroom apartment in Arvin is rented for only $400 per month. I understand that there may be some additional costs associated with managing Section 8 units, but I do not believe that an additional $360 per month, almost twice the going rate in the area, is justified.

After further investigation, I found that Villa del Commanche in Arvin, California, is not the only instance where the owners of a Section 8 certified project were being paid rents far in excess of comparable units in the area. For the record, I have enclosed a short list of projects in California and Arizona where the rents subsidize by the federal government exceed the median contract rent for the area. Even if one could argue that the median contract rent is too low by even $100 per month, you will find that the rents being subsidized by the American

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taxpayer through the Section 8 program are far too high.

I must also note that the owners of all the projects listed on the attached chart can keep the excess payments they receive from the federal government. This is a clear waste of taxpayers' money and, ironically, an added burden on those whom the Section 8 program was intended to help, as they are required to pay a percentage of the monthly rent.

The Administration also recognizes that this problem must be resolved. In the Report of the National Performance Review, Vice President Al Gore recommends freezing Section 8 new construction and substantial rehabilitation program rents for one year. This provision is also included in the President's deficit reduction package which was recently submitted to Congress. While I support this effort, it does not go far enough.

The Department of Housing and Urban Development (HUD) must be given the authority to reduce rents to those projects which are blatantly out of line with rents paid for comparable units in the area. The legislation which I worked with representatives from HUD to develop and introduced with Congressman Cal Dooley, would give HUD such authority.

In your correspondence with me, Mr. Chairman, you have expressed a concern that the rents not be lowered to a level where the projects would no longer be financially viable. I share that concern. The intent of H.R. 2470 is not to bankrupt these projects or violate a contract. The intent of the legislation is to eliminate a windfall which a few project owners may be unjustly receiving and thus stop the waste of taxpayer funds.

I look forward to working with members of the Subcommittee to ensure that limited Section 8 funds are being spent appropriately. It is unfortunate that I was denied the opportunity to personally discuss this issue with you today. Excessive rents paid to owners of Section 8 new construction projects is a problem which can and must be resolved this year and I ask your strong support.

5.16 A.1 10f2

BAKERSFIELD CALIFORNIAN

Inflated rent with HUD called taxpayer 'ripoff'

By TOM MAURER
and ROBERT TAYLOR
Californian writers

The landlord of a low-income housing complex in Arvin collects more than $900 a month from the federal government for ordinary apartments that rent for half as much only blocks away.

In the midst of gang territory in central Bakersfield, another landlord collects $650 a month for simple, one-bedroom apartments — most of which is paid by the federal department of Housing and Urban Development.

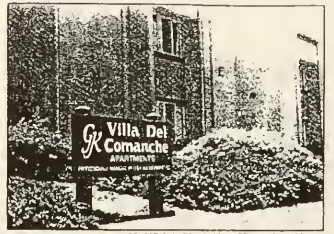
Throughout Kern County, landlords with nearly 1,400 low-income housing apartments receive HUD subsidies that are, in extreme cases, higher than rents for some of the plushest apartments and houses available in Bakersfield.

"It's just a damned ripoff and nothing more than that," said Jim Thomas, the former manager of the 57-unit Villa Del Comanche Apartments in Arvin, where monthly HUD subsidies are up to $786 for two-bedroom units and $942 for three-bedroom units.

"I've never seen anything like it," Thomas said. "But I was only there six weeks before I couldn't stomach it anymore."

Two-bedroom apartments in Arvin typically rent for $400 a month, according to local Realtors

Please turn to HUD / A2



ROBERT TAYLOR / SPECIAL TO THE CALIFORNIAN

HUD subsidies at these apartments are as high as $942

HUD: Some landlords allowed to charge higher rent at taxpayers' expense

Continued from A1

and other Arvin landlords.

HUD operates many low-income housing programs, but most are administered by a state or county agency. However, in this case, HUD deals directly with private landlords, management companies and developers on a contract basis.

Low-income families qualify for the housing and pay no more than 30 percent of the rent. HUD pays the rest, plus a utility fee of up to $63 a month. In some cases, HUD pays virtually all of the rent.

HUD officials in Los Angeles defended the rent subsidies, saying they are based on "fair market value" surveys of the Kern County area.

"This in not unique to Arvin or Kern County," HUD spokesman Scott Reed said. "I don't see anything inconsistent in those rates."

Reed said although other apartments may rent for less, the HUD market data was accurate.

"It has to be," he said. "They're not just pulling information out of the air."

However, HUD's published subsidy rates for Kern County show maximums of $618 for two-bedroom units and $772 for three-bedrooms, according to a HUD news release of October 1992.

Kern County Housing Authority officials, who also administer HUD programs, said the HUD subsidies to private landlords and management companies are "extremely too high."

"Nine hundred dollars for a three-bedroom apartment? That's outrageous," said Lucy Martinez, manager of the Kern County Housing Authority's low-income housing program.

"I can't believe HUD is allowing this," Martinez said. "I've worked with HUD for many years and this is higher than anything I've ever heard of. Oh, God, that's just outrageous."

The Housing Authority approves rates that average $400 for two-bedroom units and $600 for three-bedroom units, although often the rates are lower, Martinez said.

Under the county program, the housing authority sets the rent through a voucher system and the landlord must agree to it.

Castro

Such a checks-and-balances system "assures that we are not giving away the store and that the fair-market value is a real figure," said Paul Castro, Kern County Housing Authority director.

A quick survey of Bakersfield property managers failed to find even a plush three-bedroom apartment that rented for more than $650 a month — even in the most affluent southwest and northeast Bakersfield neighborhoods.

The most expensive rental houses in Bakersfield reached $950 per month — the same rate HUD is paying for a simple three-bedroom apartment in Arvin.

"These apartments have no dishwashers, the rooms are small, the fixtures are the cheapest you can get. There's no tile and the carpet is simple," said Thomas, the former manager of the Arvin complex.

"Some of the tenants pay as little as $5 a month, others as much as $200 a month. HUD pays the difference."

The Arvin complex is owned by Goldridge and Kest Management Co. of Culver City, which owns 600 properties with 10,000 apartment units like its Arvin complex — all of which are low-income housing with HUD subsidies.

G&K Management also owns the 66-unit Panorama Park apartments at Columbus Street and Union Avenue in Bakersfield and the 78-unit Wasco Arms complex on Poso Drive in Wasco. The manager at Wasco Arms said subsidies for two-bedroom units are more than $700.

Winnie Jacobson, assistant director of property management with G&K Management, defended the rents her company receives for the Arvin complex.

"The rents in those buildings are calculated under HUD regulations," Jacobson said. "They approved it, so that's how it's going to be."

G&K Management Vice President Carole Glodney could not be reached for comment. However, a letter sent to Glodney in October 1992 by HUD's Loan Management Branch approved the $760 and $942 rents. The letter was released to *The Californian* by HUD officials in Los Angeles.

HUD also sent a list of 26 similar low-income housing complexes throughout Kern County receiving HUD subsidies directly. A telephone survey of apartment managers at those complexes found a wide range of rents and subsidies. For example:

- St. John's Manor on East Fourth Street in central Bakersfield receives $641 monthly in rent and subsidies for all of its 79 one-bedroom apartments.
- The Villa Capris apartments on Pacheco Road receives $400 monthly for one-bedroom apartments, $452 for two-bedroom units and $549 for three bedrooms.
- The Bear Mountain Village apartments on Meyer Street in Arvin receives $504 for two-bedroom units and $538 for three-bedroom units — roughly one-third less than the HUD subsidy granted to the Villa Del Comanche apartments, even though they are only a few blocks apart.

"This whole thing certainly has to be investigated," said Thomas, the former Arvin apartment manager. "Why would HUD pay that much rent for a little apartment in Arvin. Hell, I rent a four-bedroom apartment in Bakersfield for $450 and it's a nicer place."

The Housing Authority operates two different forms of HUD housing programs in which low-income families qualify for either vouchers or certificates that can be used at any apartment complex in the county — not just a low-income housing complex.

Under the certificate program, the landlords can set whatever rents they want, but the Housing Authority's certificate is only good for so much money, which is used in conjunction with rent paid by the family. If the rent is higher, the family must pay the additional amount.

Under the voucher program, the county sets the rent and the landlord must agree to it to receive the voucher. Typically, the vouchers are worth up to $400 for a two-bedroom unit and $600 for three-bedroom apartments. Again, the family pays up to 30 percent of the rent, with the voucher covering the rest.

"Under the voucher program, we've had landlords who have wanted more rent and we've had to argue with them," said Martinez of the Housing Authority. "If what they want is too high, we just won't accept them into the program and the tenant will have to go look somewhere else."

—Robert Taylor is The Californian's *Arvin correspondent.*

MARKET COMPARISON OF SECTION 8 PROJECT RENTS

Project Name	Location	No. of Bedrooms	Br. Size	No.of Units	Current Rent	4/93 Median Contract Rent*	Monthly "Excess" Subsidy Per Unit	Monthly "Excess" Subsidy Per Project	Annual "Excess" Subsidy Per Project
Villa del Commanche	Arvin, CA	40	2	57	$785	$437	$348	$19,394	$232,728
		17	3		$923	$601	$322		
Merced Gardens	Merced, CA	20	1	47	$645	$371	$274	$12,239	$146,868
		18	2		$729	$453	$276		
		9	3		$828	$629	$199		
Clayton Gardens	Concord, CA	130	1	130	$786	$601	$185	$24,050	$288,600
Country Club Village	Rohnert Park, CA	62	1	63	$783	$543	$240	$15,010	$180,120
		1	2		$835	$705	$130		
Pleasant Hill Village	Pleasant Hill,CA	100	1	100	$810	$601	$209	$20,900	$250,800
Sky Parkway Terrace	Sacramento, CA	58	1	58	$612	$471	$141	$8,178	$98,136
Wasco Arms	Wasco, CA	64	2	78	$753	$437	$316	$24,214	$290,568
		14	3		$886	$601	$285		
Penorama Park	Bakersfield, CA	52	2	66	$778	$437	$341	$22,100	$265,200
		14	3		$913	$601	$312		

* Based on data developed by HUD's PD&R as part of the 1993 Fair Market Rent process. Does not include utilities.

Project Name	Location	No. of Bedrooms	Br. Size	No.of Units	Current Rent	4/93 Median Contract Rent*	Monthly "Excess" Subsidy Per Unit	Monthly "Excess" Subsidy Per Project	Annual "Excess" Subsidy Per Project
Bonita Vista Apts.	Sierra Vista, AZ	100	1	100	$596	$333	$263	$26,300	$315,600
Catalina Square Apts.	Yuma, AZ	100	1	100	$676	$411	$265	$26,500	$318,000
Western Sun Apts.	Mesa, AZ	40 9 8	2 3 4	57	$794 $885 $979	$542 $728 $890	$252 $157 $ 89	$12,205	$146,460

* Median Gross Rent -- Includes Utilities. Source data from 1990 census and/or Random Digit Dialing surveys.

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TESTIMONY OF

CHILD WELFARE LEAGUE OF AMERICA

SUBMITTED TO THE

HOUSE BANKING, FINANCE AND URBAN AFFAIRS

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

NOVEMBER 3, 1993

The Child Welfare League of America (CWLA) appreciates this opportunity to present its views on the operation of the Section 8 rental assistance program to the House Banking, Finance and Urban Affairs Subcommittee on Housing and Community Development. CWLA, the oldest and largest national child serving membership organization with over 700 public and voluntary agencies serving over 2.3 million children, youths and their families, urges this Subcommittee to reject any proposal to collapse the Family Unification rental certificate program into the general Section 8 program.

CWLA recognizes that there is a desperate need for affordable and decent housing in this country for millions of people. However, we also recognize the extraordinary and compelling needs of families with inadequate or no housing who are at risk of having their children placed into foster care or who cannot get their children back from foster care because of the housing crisis. These families need housing in order to keep them together. Until the goal of affordable housing for all is reached, it is important to recognize an overriding national concern that some categories of people with extraordinary needs, such as these families with children, must be addressed directly. Congress has done that by creating the Family Unification Program under which these families receive section 8 rental certificates. This program, which meets the need of keeping families together, must be continued.

Across the country, as housing becomes less and less affordable and as federal housing subsidies continue to shrink, more families will be faced with disruption and separation simply because they cannot afford housing. Existing federal housing assistance programs have long waiting lists and carry over two million parents and children, many of whom will wait more than five to seven years before getting housing. Many cities around the country have closed their waiting lists. Without assistance, the number of homeless families continues to grow. Families with children have become the fastest growing segment of the homeless population and currently comprise 35% of the total homeless population.

The foster care system has been overwhelmed by the growing numbers and needs of abused and neglected children. It does not have the resources necessary to respond alone to additional displacements caused by the lack of affordable housing. Lack of decent housing for families has significantly contributed to the 50% increase in foster care placements in the last five years. The emotional and financial costs of families separating or becoming homeless are too great. While a Section 8 rental certificate which enables a family with several children to remain together by providing a secure and affordable rental home for $7,070 per year, the cost of maintaining a child in foster care can be as much as $20,000 per year. A mother in New Jersey recently found housing because she qualified for Family Unification assistance and she was able to have her **nine children returned** to her from foster care.

CWLA strongly opposes any plan to dismantle the Family Unification Program that would make the provision of Section 8 housing assistance merely an option. Any plan to

consolidate all Section 8 set-aside programs and to instead set non-binding "goals" in lieu of this targeted allocation could diminish or wipe out gains that families have only recently been able to make under the Family Unification Program. Dismantling this program would undermine the initial successes in communities all over the country where housing authorities and child welfare agencies together have just begun to develop innovative collaborative initiatives to pool resources and expertise to best meet the housing needs of families.

There are also a number of other significant issues regarding the policies for the Section 8 program that Congress should address including the following:

Maintain the rental payment at 30% of income for families receiving Section 8. Low income families in our urban centers are hit hard by excess rents well over 30%. Voucher rent payments of 40-60% of income are common among families with incomes at 20-30% of the areas' medium level. At these low family incomes every dollar is needed to feed, clothe and take care of the essential needs of the children. Any exceptions to this 30% standard should be tightly controlled, established by regulations and rigorously monitored.

The Fair Market System of calculating rents in Section 8 should be continued. The current fair market rent system can be made to be the most effective method of determining rent levels across the country. Large families should continue to receive an exemption that provides them with a higher rental subsidy.

Abolish the payment standard and the shopping incentive of the voucher program. The locally determined payment standards for tenant rental payment in the voucher program, often set arbitrarily by the local housing authority, result in housing subsidy levels that are far below the fair market rent. This creates hardships for low-income large families and minority families whose housing choices are severely limited. Also, the so-called "shopping incentive" tied to the payment standard offers tenants an incentive to secure housing that rents below the existing payment standard. This sets up an incentive for families to rent substandard units which are the only units available at rents below the payment standard.

Portability of section 8 units to allow family mobility. Families with rental certificates should have the option of moving outside the central cities to locations that offer greater access to better jobs, schools and safer neighborhoods.

Service Need of Trends in Section 8 Housing. Families and children on waiting lists for Section 8 would be well served by additional counseling and assistance. Housing authorities generally do not provide such services to new tenants but look to community resources to help in housing search, furniture and food purchases and utility and other service charge payments. This link between housing, social services and the tenants should be strengthened.

Again, we thank your for the opportunity to present this statement and trust that the subcommittee will reject proposals that would undermine the Family Unification Program which provides housing for vulnerable children and families.

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